

IN THE CIRCUIT COURT OF
THE 11TH JUDICIAL CIRCUIT
IN AND FOR DADE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO. 94-08273 CA (22)

HOWARD A. ENGLE, M.D.,
et al.,

Plaintiffs,

vs.

R.J. REYNOLDS TOBACCO
COMPANY, et al.,

Defendants.

_____ /

Miami-Dade County Courthouse
Miami, Florida
Thursday, 9:00 a.m.
January 21, 1999

TRIAL - VOLUME 184

The above-styled cause came on for trial
before the Honorable Robert Paul Kaye, Circuit Judge,
pursuant to notice.

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APPEARANCES:

STANLEY M. ROSENBLATT, ESQ.
SUSAN ROSENBLATT, ESQ.
On behalf of Plaintiffs

DECHERT PRICE & RHOADS
ROBERT C. HEIM, ESQ.
SEAN P. WAJERT, ESQ.
On behalf of Defendant Philip Morris

COLL DAVIDSON CARTER SMITH SALTER & BARKETT
NORMAN A. COLL, ESQ.
On behalf of Defendant Philip Morris

ZACK KOSNITZKY
STEPHEN N. ZACK, ESQ.
On behalf of Defendant Philip Morris

CARLTON FIELDS WARD EMMANUEL SMITH & CUTLER
R. BENJAMINE REID, ESQ.
On behalf of Defendant R.J. Reynolds

JONES, DAY, REAVIS & POGUE
RICHARD M. KIRBY, ESQ.
On behalf of Defendant R.J. Reynolds

KING & SPALDING
MICHAEL RUSS, ESQ.
RICHARD A. SCHNEIDER, ESQ.
On behalf of Defendant Brown & Williamson

CLARKE SILVERGLATE WILLIAMS & MONTGOMERY
KELLY ANNE LUTHER, ESQ.
On behalf of Defendants Liggett Group
and Brooke Group

SHOOK HARDY & BACON
EDWARD A. MOSS, ESQ.
WILLIAM P. GERAGHTY, ESQ.
On behalf of Defendant Brown & Williamson
JAMES T. NEWSOM, ESQ.
On behalf of Defendant Lorillard

DEBEVOISE & PLIMPTON
ANNE COHEN, ESQ.
JOSEPH R. MOODHE, ESQ.
On behalf of Defendant The Council for Tobacco Research

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(APPEARANCES - Continued)

GREENBERG TRAUIG HOFFMAN LIPOFF ROSEN & QUENTEL
DAVID L. ROSS, ESQ.
On behalf of Defendant Lorillard

MARTINEZ & GUTIERREZ
JOSE MARTINEZ, ESQ.
On behalf of Defendant Dosal Tobacco Corp.
and Tobacco Institute

KASOWITZ BENSON TORRES & FRIEDMAN
AARON MARKS, ESQ.
NANCY STRAUB, ESQ.
On behalf of Defendants Liggett Group
and Brooke Group

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I N D E X

4 WITNESS

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Deposition of Michael Rosenbaum 20377

5 Deposition of Arthur Stevens 20385

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E X H I B I T S

8 PLAINTIFFS'

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ADMITTED

FOR ID

EXHIBITS

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9 NONE

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E X H I B I T S

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DEFENDANTS'

OFFERED

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13 EXHIBITS

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1 (Whereupon, the following proceedings were had:)

2 THE COURT: Okay.

3 MR. ROSENBLATT: Can we start on Stevens?

4 THE COURT: Okay.

5 MR. MOODHE: Your Honor, before we get
6 started, can I just bring up one scheduling matter?

7 THE COURT: Yes.

8 MR. MOODHE: Your Honor, I understand that
9 there are four depositions that Mr. Rosenblatt wants to
10 discuss today in terms of objections, and then for
11 tomorrow, I understand that he has five witnesses that
12 he has identified for discussion, two of whom have two
13 transcripts apiece. So that would be my understanding,
14 a total of seven transcripts, which are voluminous.

15 Two of those transcripts relate to
16 Dr. McAllister, CTR scientific director, a deposition
17 that was taken in Broin and a deposition that was taken
18 in this case.

19 I have -- I had gotten additional
20 designations from the plaintiffs early this week.
21 We're just about finished color coding them. But I
22 have commitments that have come up in New York that I
23 would like to keep, and what I would like to know,
24 since we do have at least five transcripts already
25 scheduled for tomorrow, beyond the McAllister ones,

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1 whether we might be able to carry them over until next
2 week sometime, or substitute somebody else?

3 THE COURT: Are you talking about just the

4 McAllister depos?

5 MR. MOODHE: Just the McAllister depositions.

6 THE COURT: I have no problem with that.

7 MR. ROSENBLATT: Yes. I would ordinarily
8 have no objection, other than we're trying to avoid
9 downtime for the jury.

10 THE COURT: We have a lot to do anyway.

11 MR. ROSENBLATT: Okay.

12 THE COURT: I'm not going to hold them up on
13 just the one depo.

14 MR. ROSENBLATT: That's fine.

15 THE COURT: Go ahead. If you have a
16 commitment.

17 MR. MOODHE: Thank you.

18 THE COURT: Sure. Somebody is supposed to
19 get in touch with Doc and tell him not to come down.

20 MR. MOSS: I did last night, yes, sir.

21 THE COURT: That takes care of that.

22 Let's see what we're doing today.

23 (Discussion off the record.)

24 THE COURT: Anyway, I have here Stevens.

25 MR. ROSENBLATT: Yes. We'd like to start

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1 with Stevens.

2 THE COURT: Okay. Let's start with Stevens.

3 Gee, first question. Please state your full
4 name. There's no objection. I can't believe it.

5 It starts on Page 6. The designations on 6
6 are unopposed.
7 Line -- Page 10, Line 22 through 25,
8 unopposed.
9 Page 12, 5 through 9, unopposed.
10 13, Page 13, Lines 6 through 25, unopposed.
11 Page 14, 2 through 14, unopposed.
12 Page 15, 17 through 25, unopposed.
13 MR. NEWSOM: Your Honor, does your copy have
14 the corrections on it?
15 THE COURT: Sir? Corrections?
16 MR. NEWSOM: There were corrections made to
17 this deposition. There's only a correction on the
18 first letter.
19 THE COURT: I don't know what you mean by a
20 correction.
21 MR. NEWSOM: After --
22 THE COURT: An errata sheet.
23 MR. NEWSOM: The errata sheet.
24 THE COURT: I mean, there's nothing on the
25 text.

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1 MR. NEWSOM: There is an errata sheet, and on
2 Line 23, it should be A.W. Spears, rather than S.W.
3 Spears.
4 THE COURT: Let's see. I'm not sure I have
5 an errata sheet. I don't, not on this one.

6 This depo doesn't have it.
7 (Handing document to Court.)
8 THE COURT: Thank you.
9 MR. MOSS: I guess the most important thing
10 is, does the copy they're going to read include the
11 errata changes?
12 THE COURT: I don't know.
13 MR. MOSS: Nor do I.
14 THE COURT: This is the first time I've ever
15 seen an errata sheet.
16 So if you're talking about page --
17 MR. NEWSOM: This was done back in '95 or
18 '94.
19 THE COURT: All right. The first one is on
20 Page 15, so let's take a quick peek at that.
21 See, that's the trouble. I've got to go back
22 and forth with these two sheets.
23 MR. ROSENBLATT: Would it make sense to do
24 the errata all at one time after we get through the
25 depo, because if, for example, if you exclude stuff

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1 that's on the errata sheet, it's pointless.
2 THE COURT: Okay. So the distinction here
3 is, he identifies Spears as S.W. Spears in the depo and
4 it should be A.W. Spears.
5 MR. NEWSOM: The court reporter put a W.
6 THE COURT: Whatever. Somebody did.

7 MR. NEWSOM: Somebody did.

8 THE COURT: It should be a W.

9 MR. NEWSOM: Right. We could do all of the

10 erratas after. That would be fine.

11 THE COURT: After.

12 MR. NEWSOM: There are a number of them.

13 THE COURT: Most of them are names.

14 Yes. I don't think anything here is going to

15 be that dispositive of anything. So we'll go over it.

16 MR. NEWSOM: Sometimes they're a little more

17 of a substantive change.

18 THE COURT: If you get a word that has a

19 different meaning in the context of the statement,

20 sure, I agree with you. But a misspelling of

21 somebody's name isn't going to be --

22 In any event, we're on Page 16, no objection,

23 Lines 2 through 25.

24 Page 17, no objection, 2 through 8.

25 Page 23, no objection, 21 through 25.

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1 Page 24, no objection, 2 through 2.

2 Page 25, Lines 2 through 8, no objection.

3 The objection starts on Line 9. Now, he is

4 what? The lawyer?

5 MR. NEWSOM: He is the general counsel for

6 Lorillard.

7 THE COURT: The general counsel.

8 And I looked at it and I said, well, there
9 really isn't anything there that's privileged.

10 MR. NEWSOM: It's not privileged. It has to
11 do with lobbying, lining up witnesses before Congress.

12 THE COURT: Well, lobbying, just the word
13 lobbying is not a dirty word. The fact that you may be
14 lobbying, the fact that you may prepare for lobbying
15 and all that, that's not really a problem.

16 The lobbying issue is based upon what one
17 does with the substance of what was being lobbied. And
18 that's where the problem in. So none of this --

19 MR. HEIM: Our objection on this is the same
20 we made yesterday, Your Honor, that lobbying activities
21 by the companies are irrelevant. It doesn't have
22 anything to do with the claim in this case.

23 MR. NEWSOM: And then later on in the same
24 series of objections, there's a discussion of
25 environmental tobacco issues, and they're not relevant

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1 to this case.

2 THE COURT: But I let it in any way, 9
3 through 25.

4 26, 2 through 25.

5 27, 2 through 5.

6 27, 13 through 25, all overruled.

7 Page 28, we get into the banning thing.

8 MR. NEWSOM: That's where we get into the --

9 THE COURT: I really didn't want to get into
10 any of that, so 2 through 25 is sustained, Page 28.
11 Again, 2 through 25, sustained.
12 And 30, 2 through 9, no objection.
13 Okay. That takes us up to -- I think we jump
14 to page -- I thought we jumped to 40.
15 MR. NEWSOM: The next designation is 42.
16 THE COURT: Is 42. Let's see.
17 That's the next one; right?
18 MR. NEWSOM: Right.
19 THE COURT: Okay. No objection to Line 20
20 through 25 on Page 42.
21 On 43, no objection to Lines 2 through 25.
22 On 44, no objection, 2 through 4.
23 On 45, 12 through 25, no objection.
24 46, 2 through 25, no objection.
25 47, 2 through 20, no objection.

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1 Then we skip to 56. No objection, 18 through
2 25 on 56.
3 57, no objection, 2 through 25.
4 58, 2 through 24, no objection.
5 65 through 25, no objection.
6 61, 2 through 25, no objection.
7 62, 2 through 25, no objection.
8 63, 2 through 18, no objection.
9 19 through 25, sustained.

10 64, Lines 2 through 5, sustained.
11 I allowed 6 through 11, through the question
12 mark.
13 MR. NEWSOM: 6 through 11.
14 THE COURT: On 64. And 12 through 18 I
15 disallowed. 19 through 25, overruled.
16 65, 2 through 3, overruled; 4 through 21 on
17 65 is unopposed. You got a scribble on Line 22. I
18 think that's an error.
19 MR. NEWSOM: 22 and 23 were just -- were the
20 answer. That needed to be included with -- we marked
21 it as in, but really it's a counterdesignation.
22 THE COURT: I figured that might be an error
23 because it's a question, but, you're right, it is the
24 answer. I'm sorry.
25 So that would go down to 23.

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1 66, 4 through 25, no objection.
2 67, 2 through 3, no objection.
3 Page 69, 19 through 25, no objection.
4 Page 70, 2 through 25, no objection.
5 Page 71, 2 through 25, no objection.
6 Then I ran into a problem on Page 72 --
7 MR. NEWSOM: Your Honor, on 72, we would ask
8 that Lines 2 and 3 be included.
9 THE COURT: Yes. But I also ran into a
10 problem with 16 through 25, because I got a squiggly

11 line down that. And it's not a color-coded line.

12 MR. NEWSOM: Page --

13 THE COURT: 70, Line 16 -- or 15, actually.

14 Question: I'm trying to get a handle as to whether or
15 not your usual attendance --

16 MR. NEWSOM: I don't show that as being
17 designated or counterdesignated.

18 THE COURT: I got a little line on it, one of
19 the little squiggles. But it isn't color-coded. It
20 looks like somebody took a pen.

21 MR. NEWSOM: It isn't designated or
22 counterdesignated.

23 THE COURT: I didn't think so.

24 73, 16 through 25, no objection.

25 Skip to 81, 10 through 23, no objection.

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1 83, 2 through 25, no objection.

2 MR. NEWSOM: Your Honor, Line 2 on Page 83
3 ought to be deleted. It's a response to --

4 THE COURT: Let's see. Line 25 says: Do you
5 mind if I stand? He says: No, not at all.

6 MR. NEWSOM: Line 25 is not in, so that line
7 doesn't make any sense.

8 THE COURT: Yes. I see that.

9 Okay. 84.

10 MR. NEWSOM: Your Honor, on Line 9 on 84, we
11 didn't object where it says, "and I think it's only

12 \$125,000 per annum," but I'd like to simply object to
13 that now and strike that part.

14 THE COURT: Dr. Glenn has authority for
15 salary increases for staff members below a certain
16 level.

17 All right. So we can just cut off -- cutting
18 out the words, and I think it's 125,000 per annum. The
19 rest is all right.

20 So 2 through 16 with the correction would be
21 admitted. 21 through 25, no objection.

22 85, 2 through 25 --

23 MR. NEWSOM: Your Honor, on 85, we didn't
24 object to Lines 11 and 12, but it relates to
25 Dr. Glenn's conversation, and we ask that that be

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1 deleted.

2 THE COURT: Okay. I'll be consistent.

3 11 and 12 on 85, sustained.

4 87, 6 through 10 is all right. There's an
5 objection to 11, 12 and 13.

6 All right. I'm going to run into a little
7 problem with this. This is the first time he's
8 mentioned that.

9 MR. NEWSOM: And there are a number of
10 places --

11 THE COURT: Then from there on out there's a
12 number of places.

13 MR. NEWSOM: Where he's asked about something
14 and he says, I basically can't answer that because I'm
15 the general counsel of the company, and that's
16 privileged. We don't think his assertion of the
17 privilege should be put before the jury.

18 THE COURT: Yes. I put some question marks
19 on that. There's a lot of these references throughout.

20 Do you want to discuss that? Because you
21 asked about CTR. Of course, if he says, anything I
22 learned about CTR I learned in my official capacity as
23 counsel, is, in essence, establishing an
24 attorney-client privilege, or work-product privilege or
25 some sort of privilege.

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1 MR. ROSENBLATT: Well, this is a classic guy
2 who wore two hats. He is a CTR director.

3 THE COURT: Yes. But he's making that
4 distinction when he's saying I'm the director of CTR, I
5 learned some information. That's fine, but if as
6 general counsel, I learned information and I'm
7 asserting that privilege, he has a right to do that.

8 The question then, if he does assert the
9 privilege, by asserting the privilege and having
10 somebody hear that he's asserted the privilege is an
11 implication that there's an answer to the question:
12 Isn't it true that CTR did this? And he says, well,
13 whatever I learned about it is privileged, I can't tell

14 you. The implication there is yes, he did, but I'm not
15 going to tell you about it.

16 MR. NEWSOM: That assertion --

17 THE COURT: That's the danger of it.

18 MR. NEWSOM: His assertion of the privilege
19 wasn't challenged then. It's never been challenged.

20 THE COURT: So I think I agree with you on
21 that.

22 So 11, 12 and 13 are out.

23 MR. NEWSOM: I guess it would be the last
24 word on 10, as well.

25 THE COURT: Yes. Up to the word existed.

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1 We're going to run into that problem again as
2 we go through this.

3 88, Lines 2 through 8, no objection.

4 MS. BERGER: What about -- 14 through 25 on
5 87 is unopposed.

6 THE COURT: On 87, yes. It was just those
7 three lines. I'm sorry. I forgot to mention it.

8 Again, we run into this issue on Page 91, 4
9 through 6 and 13 through 16.

10 So any reference to him saying anything I
11 learned as general counsel is sustainable.

12 Page 96. We got into this airline banning
13 thing, and I sustained the objection to 13 through 25.

14 And 87, 2 through 4.

15 MR. NEWSOM: You mean 97.
16 THE COURT: Did I say 87? 97.
17 Now we jump to -- where do we jump to? 110,
18 you say?
19 MR. NEWSOM: 110.
20 THE COURT: Right. Then we talk about this
21 New York Times columnist. I sustained the objection on
22 that. 6 through 25, Page 111; 2 through 25, Page
23 112 -- 110, 11; 112, 2 through 25.
24 Page 113, 2 through 25.
25 Page 114, 2 through 5 and 11 through 25.

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1 Page 115, I overruled the objection. It's a
2 generic discussion. 2 through 25, overruled.
3 116, 2 through 5, overruled. Sustain the
4 objection, 6 through 16.
5 So at the end of Line 5 you jump to Line 17.
6 The answer, 17 through 25, is overruled.
7 117, 2 through 9, overruled; 10 through 24,
8 sustained.
9 118, 2 through 14 is sustained; 22 through
10 25, sustained.
11 119, 2 through 24, sustained.
12 120, 4 through 25, sustained.
13 MR. NEWSOM: I'm sorry, Your Honor. 119 is?
14 You said 2 through 24 -- 2 through 25?
15 THE COURT: Well, yes, the end of the page.

16 MR. NEWSOM: Yes.
17 THE COURT: 120, 4 through 25. 121, 2
18 through 17.
19 On 121, 18 through 25 was overruled.
20 122, 2 through 7, overruled.
21 On 122, 8 through 24, sustained.
22 123, 2 through 18, sustained.
23 124, Lines 7 through 11, no objection.
24 MS. BERGER: What page? 123, no objection,
25 19 through 21.

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1 THE COURT: Oh, yes. Yes. I'm sorry.
2 124, 7 through 11, no objection.
3 20 through 25, overruled.
4 125, 1 through 15, overruled.
5 19 through 25, overruled.
6 126, 2 through 25, overruled.
7 127, 2 through 6, overruled.
8 133, 13 through 15 sustained; 22 through 25,
9 overruled.
10 134, 10 through 25, overruled.
11 Page 135, 2 --
12 MR. NEWSOM: Your Honor, on those objections,
13 this is the lawyer who has no scientific training being
14 asked about his views of science. It seems that he's
15 not really competent to give those views, and his
16 personal views are really not relevant.

17 THE COURT: I took that into consideration.
18 135, 2 through 11, overruled. 18 through 25,
19 overruled.
20 136, 2 through 25, overruled.
21 137, 2 through 8, overruled; 10 through 25,
22 sustained.
23 138, 2 through 3, sustained; 9 through 25,
24 sustained.
25 139, 2 through 25, sustained.

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1 140, 2 through 25, sustained.
2 141, 2 through 7, sustained; 8 through 25
3 sustained.
4 142, 2 through 6 sustained.
5 145, 7 through 12, sustained.
6 Line 25 on 145, and Lines 2 through 5 on 146
7 sustained.
8 Overrule the objection from 6 to 25 on 146.
9 Overrule objections on 2 through 25 on Page
10 147.
11 148, 2 through 5, overruled.
12 Skip, skip.
13 158, no objection, 10 through 13. 18 through
14 25.
15 160, no objection, 2 through 10.
16 161, no objection, 17 through 24.
17 162, no objection, 23 through 25.

18 163, no objection, 2 through 25.
19 164, no objection, 2 through 17.
20 18 through 24, yes. I thought about that.
21 That's, again, your lobbying business. I initially
22 left it in. Overrule the objection.
23 Like I said earlier when we discussed this
24 issue, it all depends on how it's utilized and how it's
25 presented to the jury as to whether or not they're

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1 going to make a claim because of it. If they are, they
2 would be -- the objection would be sustainable.
3 MR. NEWSOM: In this particular designation
4 it seems to suggest there's something wrong with us
5 opposing legislation.
6 THE COURT: If they make that claim and
7 address the jury with that, really, to say this is what
8 the companies do, they lobby -- see, in this case, they
9 do say lobbying for or against a particular issue.
10 That's a little bit different than just saying we
11 lobby.
12 MR. NEWSOM: If it doesn't relate to the
13 claim, it's not relevant.
14 THE COURT: I know that's your claim, but I'm
15 looking at it in the overall scheme of things, and I
16 question this one because they do talk about the
17 adverse impact and the definitive position that he's
18 taking.

19 So, in that sense, one could make the claim,
20 the objection that they are complaining about the
21 position taken during the lobbying, not just lobbying.
22 There's nothing wrong with lobbying. It's the position
23 you take while you're lobbying, and that's where the
24 issue is.

25 MR. NEWSOM: That's our essential position,

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1 there's nothing wrong with lobbying, and to suggest
2 there is something wrong with it, they shouldn't be
3 able to do that with the jury.

4 THE COURT: 18 through 24 should be out.

5 165 -- let's see. 164, Line 25, and 165,
6 Lines 1 through 12 are unopposed.

7 And then I granted the counterdesignations,
8 13 through 25. And on 166, the counterdesignations, 12
9 through 24, I granted.

10 MR. NEWSOM: 166 also, Line 2.

11 THE COURT: Line 2? I'm sorry. I missed it.
12 What are you talking about?

13 MR. NEWSOM: On 166, Line 2 is part of the
14 counterdesignation.

15 THE COURT: I don't have anything on Line 2
16 for that.

17 MR. NEWSOM: It's just the rest of the
18 answer.

19 THE COURT: Oh, I see what you're saying.

20 Yes, well, that goes without saying. Yes. Until the
21 end of the sentence, yes, I agree.

22 It wasn't marked, so it just sort of passed
23 my eye.

24 All right. Now we're at 172. Again, we get
25 into this issue of privilege.

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1 MR. ROSENBLATT: Well, I mean, certainly the
2 answer through 11 --

3 THE COURT: That's what I'm reading right
4 now.

5 The question is: Would you agree -- you
6 would agree, would you not, that members of the
7 Scientific Advisory Board don't know anything about
8 special projects?

9 And Mr. Long cautions the witness: If you
10 have information other than as general counsel.

11 Answer: He says: I don't know -- I have
12 never had a discussion; therefore, I have no firsthand
13 knowledge with an SAB member as to their knowledge of
14 CTR's special projects.

15 Then he says everything else that I know of,
16 he said, is in his capacity as general counsel.

17 So I initially left that in with the
18 exclusion of Lines 12 through 14.

19 MR. NEWSOM: And Lines 6 and 7 would be
20 excluded as well.

21 THE COURT: Line what?
22 MR. NEWSOM: Line 6 and 7, Mr. Long's
23 caution.
24 THE COURT: Oh, yes. Yes, colloquy. That
25 all goes without saying.

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1 Page 173, I don't know what -- I don't
2 understand his answer.
3 MR. ROSENBLATT: No objection on 173.
4 THE COURT: The trouble is I'm not sure of
5 the answer. I read it, and I -- he says -- question:
6 The people that have knowledge of the special projects
7 divisions are lawyers and the top executives; isn't
8 that correct?
9 Answer: My knowledge of the CTR's special
10 projects function, not division, because there is no
11 division that I am aware
12 I looked at that and said, what does that
13 mean?
14 MR. NEWSOM: Sometimes I think the plaintiffs
15 in this lawsuit have claimed there's something that CTR
16 called special projects.
17 THE COURT: No. I understand.
18 MR. NEWSOM: He's saying there is not.
19 THE COURT: Just look at the answer. It
20 doesn't make any sense as it relates to the question.
21 MR. NEWSOM: Yes. I agree.

22 THE COURT: So the question is, there are
23 other people who have knowledge, and he doesn't answer
24 the question. He says: My knowledge of CTR's special
25 projects function, not division. It doesn't mean

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1 anything. So I don't think the answer is right.

2 Now we get down to Line 15. Then he starts
3 answering the question.

4 So, if you take the question on Line 6
5 through 8, that's fine. And the answer on Line 15
6 through 17, that's fine.

7 And --

8 MR. NEWSOM: Except --

9 THE COURT: Then we get 18 through 21. Now
10 we get a lawyer disseminating information to division
11 members and executives and nonlawyers, in his capacity
12 as general counsel.

13 MR. ROSENBLATT: Yes. That's very important.
14 It's part of our contention that they deliberately set
15 up special projects so that the claim can be made of
16 lawyer-client privilege, and it's a game. It's part of
17 the fraud, that these people on the -- on the
18 Scientific Advisory Board, they don't know. It's
19 hidden from them.

20 And it comes under the aegis of the
21 attorney -- what we're saying to the attorney, you
22 know, the attorneys know about it. Why is that? Why

23 is that?

24 THE COURT: What the attorney here is saying
25 is that any knowledge the board members have,

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1 executives and nonlawyers --

2 MR. ROSENBLATT: Came from lawyers.

3 THE COURT: -- came from me.

4 MR. ROSENBLATT: That's okay.

5 MR. NEWSOM: But that would be privileged.

6 MR. ROSENBLATT: So -- it would. Fine. I'm
7 not asking him to say, what information did you give
8 them in your capacity as general counsel. I'm saying,
9 the information came from him.

10 THE COURT: Okay. All right. I'll allow 18
11 through 21.

12 MR. NEWSOM: So what is in, Your Honor?

13 THE COURT: Sir?

14 MR. NEWSOM: So what is in now and what is
15 out?

16 THE COURT: 173, Lines 6 through 8 is in.
17 None of this was objected to, by the way.

18 Line 12 through 14 is overruled. Any
19 objection? 15 through 21 is overruled.

20 MR. NEWSOM: So 9 through -- we'd rather --
21 even though 9 through 11 doesn't read very well, I
22 would just as soon have 9 through 11 in.

23 THE COURT: So from 6 to 21, put it all in.

24 Okay.

25 175, Lines 12 through 16, sustained.

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1 Page 178, lines 3 through 6 and 11 through
2 25, no objection.

3 179, 2 through 4, no objection.

4 And 179, Lines 5 through 13, is overruled.

5 MR. NEWSOM: Your Honor, with respect to
6 that, he's being asked to comment on --

7 THE COURT: Let me see.

8 MR. NEWSOM: -- some documents that are not
9 before the jury.

10 THE COURT: He says: Who at Lorillard knows
11 about 1,500 documents of the special projects division?
12 He says: Other lawyers. Okay.

13 Then he says: Excluding lawyers, Spears and
14 the chief executives. I assume that's the question.

15 MR. NEWSOM: These are documents where the
16 privilege has been asserted with the special master.

17 THE COURT: We don't know. It doesn't make
18 any difference. If you know about them, you know about
19 them. It's the contents of the privileged documents
20 that would be excluded, not the fact that they exist.
21 Because we run into a little problem on 180 on that
22 issue.

23 MR. NEWSOM: It gets worse as we go along.

24 THE COURT: I know. I'm just trying to

25 figure out this one here, because they don't really

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1 answer the question they ask on Line 9.

2 So let's leave it in from 1 through 8.

3 Exclude 9 through 13, because it isn't responded to.

4 Then the answer on 180, Lines 4 through 7, is
5 a problem. So I'm going to have to exclude 4 through 7
6 and sustain the objection, because you make reference
7 to the subject of the documents being reported in the
8 public press. We run into a problem with that.

9 19 through 25 on Page 180 is overruled.

10 181, 2 through 3 is overruled; 15 through 22,
11 sustained.

12 182, 2 through 6, sustained.

13 7 through 25, overruled.

14 183, Line 2, overruled; 3 through 25 on 183,
15 sustained.

16 184, 2 through 7, sustained.

17 185 --

18 MS. BERGER: 184, 22 through 25, unopposed.

19 THE COURT: I said 184 -- oh, down here, yes.
20 22 through 25, without objection.

21 185, 2 through 19, no objection.

22 And he said -- he didn't have any response to
23 the question, which is why I let that question in.

24 MR. ROSENBLATT: Well --

25 MR. NEWSOM: It's very argumentative.

1 THE COURT: Yes, it is, it's argumentative.

2 MR. ROSENBLATT: But his saying, I have no
3 response --

4 THE COURT: Yes. I understand that, but
5 somebody was arguing a point and he didn't want to get
6 into the argument, he had no response, and it is
7 argumentative.

8 Sustain the objection to 20 through 25 on
9 185, and 186, Lines 2 through 5.
10 189, 4 through 7, sustained; 12 through 23,
11 sustained.

12 A lot of repetition going on.

13 191, again, this is a lot of repetition. He
14 even says, I rejected that premise earlier, and I'm
15 rejecting it now. And we're just covering old ground.

16 So it's repetitious. Sustained.

17 22 through 25, sustained.

18 192, 1 through 15, sustained.

19 195, 19 through 23,

20 MR. NEWSOM: He said --

21 THE COURT: That's another one of those, yes.
22 So I'll sustain that objection.

23 196, 9 through 12, sustained.

24 198 --

25 MR. ROSENBLATT: Well, this is part of the

1 fraud.

2 THE COURT: Okay. Now, 5 through 12, I
3 think, answers your question. Okay. And I allowed
4 that. Okay.

5 Do either of you want me to get the next
6 question in? Never mind. It's a joke.

7 Question, Line 13 through 18, sustained.

8 The question on Line 19 through 21, no
9 objection, 198.

10 199, 6 through 12, no objection.

11 Now, Line 13 through 18 is overruled. The
12 question is 19 through 21.

13 MR. NEWSOM: That's the same issue, Judge.

14 THE COURT: Yes, but it's related. Now he
15 makes the distinction, which I think the jury needs to
16 know that there is a distinction. I left in 13 through
17 21.

18 Page 203, lines 20 through 22, no objection;
19 23 to 25 is sustained.

20 Lines 2 through 16, let me take -- 2 through
21 11 is sustained on Page 204.

22 MR. NEWSOM: And then --

23 THE COURT: Let's see. 12 through 16 is just
24 a question.

25 MR. NEWSOM: Just a question. No answer.

1 THE COURT: There is no answer. So 12
2 through 16 is sustained.
3 Page 205, that's sustained; 13 through 23.
4 Page 206, Lines 3 through 25, sustained.
5 207, 2 through 11, sustained; 16 through 25,
6 sustained.
7 208, 2 through 8 and 19 through 25,
8 sustained.
9 209, 2 through 15, sustained; 23 through 25,
10 sustained.
11 210, 2 through 4, sustained.
12 MR. NEWSOM: That's it.
13 THE COURT: Okay. Let's go over the errata
14 sheet, then.
15 We did 15. Let's go to 27 and see what that
16 is.
17 27, Line 3 should be "and" instead of "in."
18 Are you with me on that?
19 MR. NEWSOM: Yes. I gave him a copy of the
20 errata sheet.
21 THE COURT: Are you with me on Page 27?
22 MS. BERGER: Yes, sir.
23 THE COURT: So, "others the strategy and the
24 plans."
25 Page 28, Line 4.

1 MR. NEWSOM: You excluded that.

2 THE COURT: I'm sorry?

3 MR. NEWSOM: Wasn't 28, Line 4, excluded?

4 THE COURT: Yes. I didn't --

5 MR. NEWSOM: So this part we don't need to

6 worry about.

7 THE COURT: Okay.

8 Page 59.

9 MR. NEWSOM: That wasn't designated.

10 THE COURT: We don't need that.

11 Page 71. Page 71, Line 24. Wholesalers

12 should be tobacco leaf wholesalers. All right.

13 Tobacco leaf wholesalers.

14 Page 79. I don't think 79 was in.

15 MR. NEWSOM: No.

16 MS. BERGER: The next page would be 84.

17 THE COURT: 82 was not in.

18 84, Line 25, the spelling of Sandifur. No

19 problem.

20 Page 96. I kept that out anyway.

21 97, Line 25, that's not in.

22 98 is not in anyway.

23 109.

24 120 kept out.

25 121, Line 8, that's out anyway. Line 9 was

1 out.

2 Okay. 125, Line 7. The second "of" should
3 be "or." So it should read: Availability of brand
4 varieties and customers or existing smokers.

5 Page 164, Line 16. I assume what they're
6 saying is they lobby and coordinate lobbyists.

7 Page 169, that's not in. Line 21, that's not
8 in.

9 187 is not in.

10 191 -- 191, Line 12 is out anyway.

11 Okay. So that takes care of that.

12 Okay. The jury should be coming in at 10:00.

13 THE BAILIFF: We're short about five or six.

14 THE COURT: Yes. Well, it figures.

15 This is the one that gave us some problems.

16 I think it starts on Page 151.

17 MS. LUTHER: Is that Holbrook, Judge?

18 THE COURT: Yes.

19 MR. HEIM: Holbrook.

20 I promised you I would read that last night,
21 but I didn't.

22 MR. ROSENBLATT: We can wait on that.

23 THE COURT: Yes. I am concerned about it.

24 MR. ROSENBLATT: I wanted to see the context
25 a little more.

1 THE COURT: I wanted to go over it.
2 MR. ROSENBLATT: Okay.
3 THE COURT: I got to the point where I gave
4 up.
5 MR. MOSS: That's what Kelly did the night
6 before.
7 MS. LUTHER: What did I do the night before?
8 MR. MOSS: You gave up reading it.
9 MS. LUTHER: I didn't give up reading it.
10 Just the time.
11 THE COURT: Reading it takes so much during
12 the day, all night long.
13 We have at least that one to give them.
14 MR. ROSENBLATT: Didn't we finish --
15 THE COURT: We went through, I think,
16 Rosenbaum.
17 MR. ROSENBLATT: Rosenbaum. So we've got
18 two. Rosenbaum is very short.
19 THE COURT: And Fulford.
20 MS. LUTHER: We need to go through that.
21 THE COURT: We did or did not?
22 MS. LUTHER: No, we did not.
23 THE COURT: Let's go ahead and do -- get the
24 jury out of the way with these, and then we'll take a
25 break and then we'll try to go over Fulford.

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1 Now, if you're going to do anything for
2 Friday, some depositions we're going to go over Friday
3 and other things --

4 MR. ROSENBLATT: That will be our whole
5 focus, instead of documents.

6 THE COURT: -- I'd like to see those
7 tomorrow -- I mean, today.

8 MR. ROSENBLATT: Today.

9 THE COURT: Although if we're going to go
10 over them, I may not read them -- I may skim them, just
11 to see.

12 MR. ROSENBLATT: Read them as you go. Okay.

13 THE COURT: Okay. Let's take a short break
14 while we're figuring out the jury.

15 (A brief recess was taken.)

16 MR. KIRBY: Your Honor, here is your copy of
17 Horrigan.

18 THE COURT: Oh, goody.

19 MR. KIRBY: And our objections. We promised
20 you that this morning. We'll go over those tomorrow.

21 THE COURT: All right. We have a jury
22 available, so let's bring them out.

23 THE BAILIFF: Yes, Your Honor.

24 Bringing in the jury.

25 Jurors entering the courtroom.

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1 (The jury entered the courtroom.)

2 THE COURT: Good morning, folks.

3 JURY PANEL: Good morning.

4 THE COURT: Anybody have an interesting night

5 last night? Wait. Don't answer that.

6 Did anybody watch television, read newspapers

7 or see anything from radio, TV, as an aftermath, let's

8 say, you know, of the President's State of the Union

9 address?

10 Anything to do with tobacco?

11 JURY PANEL: (Negative response.)

12 THE COURT: Nothing?

13 All right. We're ready to proceed, and we're

14 doing, what? Mr. Rosenbaum.

15 MR. ROSENBLATT: Michael Rosenbaum.

16 THE COURT: Mr. Silverman --

17 MR. SILVERMAN: Yes.

18 THE COURT: -- is Mr. Rosenbaum.

19 MR. SILVERMAN: Yes. Designated reader.

20 (The deposition of Michael Rosenbaum was read

21 as follows:)

22 MR. ROSENBLATT: Michael Rosenbaum's

23 deposition was taken in New York City on October 12,

24 1993.

25 Q. Tell us your name, please, and your address.

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1 A. Michael Rosenbaum. Do you want my home,

2 business or both?

3 Q. Both.

4 A. Home address is

5 [DELETED].

6 My business address is 135 East 57th. That's

7 New York, New York, 10022.

8 Q. What is your business or occupation?

9 A. I'm an officer and director of Brooke Group,

10 Limited.

11 Q. What is your title as an officer?

12 A. Executive vice president.

13 Q. And how long have you been executive vice

14 president of Brooke Group, Limited?

15 A. I think probably four years or so. Three or

16 four years.

17 Q. What is Brooke Group, Limited?

18 A. It's a holding company.

19 Q. What does it hold?

20 A. It holds stock in Sky Box International. It

21 holds stock in New Valley, also known as Western Union.

22 It holds stock in Liggett. It holds stock in a small

23 company called Com Products. And it holds stock in

24 companies that deal in Russia.

25 MS. LUTHER: Stanley, go down to Line 23

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1 there on Page 4 and continue to 5, Line 2.

2 THE COURT: Let me see what you're talking

3 about.

4 What was it?

5 MR. ROSENBLATT: Why didn't you think I know
6 that?

7 MS. LUTHER: Because it was a late
8 designation.

9 THE COURT: Which one?

10 MS. LUTHER: Page 4, Line 23, through Page 5,
11 Line 2.

12 THE COURT: Yes. That was the one with the
13 little mark. I had it on my copy. 23, 24, 25.

14 MR. ROSENBLATT: Okay.

15 Q. What is your connection with Liggett Group,
16 Inc.?

17 A. You mean me personally?

18 Q. Yes.

19 A. I personally don't have any connection.

20 MR. ROSENBLATT: Page 14.

21 Page 14, Line 2.

22 Q. What is your relationship between Brooke
23 Group, Limited and Liggett Group, Inc.?

24 A. Brooke Group, Limited is the ultimate parent
25 of Liggett Group, Inc.

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1 Q. Does Liggett Group, Inc., manufacture
2 cigarettes?

3 A. Liggett Group, Inc., manufactures cigarettes.

4 Q. What brands -- what brands?

5 A. Eve and Chesterfield. I think Pyramid, L&M.
6 I'm not sure about all of them.
7 Q. Which one is the best seller, the biggest
8 seller of the Liggett Group? Is it Chesterfield?
9 A. I believe -- I'm not sure. I don't think
10 Chesterfield is the best seller.
11 Q. Which one is?
12 A. Of the brands?
13 Q. Right.
14 A. I think Eve or L&M. I think maybe Eve.
15 Q. When did Eve come into existence as a brand?
16 A. I don't know.
17 MR. ROSENBLATT: We go to Page 20?
18 MS. LUTHER: Right.
19 MR. ROSENBLATT: Line 17.
20 Q. On a day-to-day basis, do you have anything
21 to do with cigarettes?
22 A. No, I don't.
23 Q. Do you attend meetings where cigarettes are
24 discussed?
25 A. I don't attend meetings where cigarettes are

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1 discussed. As a director of Brooke Group, Limited,
2 obviously we get -- the company, maybe once a year, I
3 think, makes a presentation to the ultimate directors
4 about their product.
5 Then I receive information in the overall

6 picture of Brooke Group, Limited. I will receive
7 financial information which says Sky Box is doing this
8 and Russia is doing that and Liggett is doing this, and
9 so on and so forth.

10 Q. So you certainly know who's doing good and
11 who's doing lousy?

12 A. I see the figures as they're presented, yes.

13 MR. ROSENBLATT: Page 46.

14 MS. LUTHER: I have 28.

15 MR. ROSENBLATT: 28.

16 MS. LUTHER: I'm sorry. That's out.

17 MR. ROSENBLATT: I know we skipped large
18 stretches here.

19 MS. LUTHER: Yes. It is 46.

20 MR. ROSENBLATT: 46?

21 MS. LUTHER: Uh-huh.

22 MR. ROSENBLATT: Okay. Page 46, Line 10.

23 Q. Do you have a boss or an immediate
24 supervisor?

25 A. Yes.

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1 Q. And who is that?

2 A. I would say that's Bennett LeBow. He's the
3 chairman of Brooke Group, Limited.

4 Q. His office is in the same building as yours
5 is?

6 A. No.

7 Q. Where is his office?
8 A. His office is in Florida.
9 Q. Where in Florida?
10 A. In Miami.
11 MS. LUTHER: 75, Stanley.
12 MR. ROSENBLATT: 75.
13 MS. LUTHER: Line 21.
14 Q. Well, isn't the usual purpose of a trade
15 association to figure out ways to get the public to buy
16 more of your product, whatever the product might be?
17 A. I guess the purpose of a trade association is
18 to help its members make money. I would assume that's
19 one of their goals.
20 MS. LUTHER: 114.
21 MR. ROSENBLATT: 114, Line 9.
22 Q. You act as though the American Cancer Society
23 and the Surgeon General and the American Heart
24 Association or the American Lung Association say
25 contradictory things.

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1 A. Excuse me. I didn't mean to say that.
2 Q. They all say the same thing; don't they?
3 A. Those organizations have a fairly uniform
4 position.
5 Q. The uniform position is that smoking causes
6 cancer and lung disease and heart disease and death;
7 right? I mean, that's their position. You may not

8 agree with it, but that's their position, and you've
9 read about it?

10 A. Yes. They have positioned it as it's very
11 harmful.

12 Q. Name me one organization unconnected with the
13 tobacco industry that says they're wrong.

14 A. I can't. I don't know of an organization
15 that -- I can't name an organization.

16 Q. Do you think one exists that has any kind of
17 prestige or reputation in the American scientific
18 community that takes the position that cigarette
19 smoking is not harmful to health?

20 You know that there's no such organization;
21 don't you?

22 A. I mean, I don't know. I would assume that
23 there are organizations who challenge all data of all
24 scientific reports. They challenge the methodology.
25 They challenge the conclusion. There are scientific

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1 organizations that challenge -- if you said the moon is
2 up, they would challenge it.

3 There are a lot of legitimate people who
4 challenge on methodical grounds, all sorts of things
5 that people in general believe are true.

6 Q. Name one such organization that has got
7 legitimate scientists in it, medical doctors or
8 legitimate researchers?

9 A. I was thinking, when the government says that
10 you can cut taxes and raise spending and will balance
11 the budget, they can parade some economist in to say
12 that. And then there's another group that says, I
13 don't think their statistics they relied on are valid.
14 I couldn't name that organization.

15 Q. I'm talking about health issues.

16 A. I said I can't name any organization in any
17 of these areas.

18 MS. LUTHER: That's it.

19 MR. ROSENBLATT: That's it for Rosenbaum.

20 THE COURT: Okay. We have another one.
21 Stevens.

22 MR. ROSENBLATT: Yes. Arthur J. Stevens,
23 S-t-e-v-e-n-s.

24 Mr. Stevens' deposition was taken in New York
25 City, December 3, 1993. And we begin on Page 6.

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1 (The deposition of Arthur J. Stevens was read
2 as follows:)

3 Q. Please state your full name.

4 A. Arthur J. Stevens.

5 Q. What is your business or professional
6 address?

7 A. One Park Avenue, New York, New York, 10016.

8 Q. Are you an attorney, sir?

9 A. I am.

10 Q. And what year were you licensed to practice?
11 A. 1960.
12 MR. ROSENBLATT: Go to Page 10, Line 22.
13 Q. What did you do after Pfizer?
14 MR. SILVERMAN: What line are you on?
15 MR. ROSENBLATT: I'm on Line 22, Page 10.
16 MR. NEWSOM: It says --
17 MR. ROSENBLATT: I'm sorry.
18 Q. Who did you go with after Pfizer?
19 A. Lorillard.
20 Q. What year was that?
21 A. March of 1969.
22 MR. ROSENBLATT: Page 12, Line 5.
23 Q. And you were hired to do what in 1969?
24 A. I was hired as general counsel.
25 Q. As the general counsel for Lorillard?

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1 A. Yes, sir.
2 MR. ROSENBLATT: Page 13, Line 6.
3 Q. You are still with Lorillard?
4 A. I am.
5 Q. And still as general counsel?
6 A. My title now is senior vice president,
7 general counsel.
8 Q. When did you become senior vice president?
9 A. 1979.
10 Q. So from '69 to '79, you were general counsel,

11 and --

12 A. No. From '69 to '71, I was general counsel.
13 In '71, I became vice president and general counsel.
14 And in '79, I became senior vice president and general
15 counsel.

16 Q. In terms of your actual work and duties, what
17 was the significance of becoming vice president in
18 1971?

19 A. I am not sure that I remember the details,
20 but probably in terms of the expansion of the size of
21 the staff, and additional supervisory responsibilities.

22 Q. Well, as vice president, did you have duties
23 and responsibilities unconnected with your role as
24 general counsel?

25 A. Additional responsibilities?

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1 Q. Correct.

2 A. No.

3 Q. Then you were vice president and general
4 counsel from '71 until '79?

5 A. That is correct.

6 Q. And so that your status and title has
7 remained the same since 1979?

8 A. Yes.

9 MR. ROSENBLATT: Page 15, Line 17.

10 Q. Who is your immediate supervisor at
11 Lorillard?

12 A. Andrew H. Tisch, T-i-s-c-h.
13 Q. In terms of the chain of command at
14 Lorillard, who was the number-two man after Tisch?
15 A. The vice chairman on the organizational chart
16 is A.W. Spears. There is an executive vice president
17 of marketing named Martin Orlowsky, O-r-l-o-w-s-k-y.
18 I can't describe that as a chain of command
19 because it's not my understanding that Mr. Orlowsky
20 reports to Dr. Spears. So, therefore, I do not think
21 it is a chain of command.
22 Q. Who do you report to?
23 A. Andrew H. Tisch.
24 Q. You do not report to Dr. Spears?
25 A. I do not.

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1 Q. Are you and Dr. Spears at the same level?
2 A. I have not seen the organizational chart, but
3 as his title is vice chairman, I doubt that we are at
4 the same level.
5 Q. He is higher than you?
6 A. Yes, sir.
7 Q. As a practical matter, do you have much
8 contact with Dr. Spears?
9 A. Yes, I do.
10 Q. Okay.
11 A. I have contact with everyone in the senior
12 level.

13 Q. What is Dr. Spears' role at Lorillard?
14 A. His title is vice chairman. He is the senior
15 officer at our Greensboro operation, and, therefore,
16 the research and development and manufacturing
17 operations report directly to him. And he has
18 responsibilities with respect to our international
19 business.

20 Q. What is Dr. Spears' background? Is he a
21 lawyer, doctor, educational background?

22 A. I believe he has a Ph.D in chemistry.

23 MR. ROSENBLATT: Page 23, Line 21.

24 Q. What do you do for Lorillard outside your
25 capacity as an attorney?

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1 A. Outside of my capacity as an attorney?

2 Q. Right. I mean, when I hear the title senior
3 vice president and general counsel, you know, my
4 assumption is, okay, general counsel is one job, senior
5 vice president is another job.

6 A. The cleavage is not that clear. My
7 responsibilities at Lorillard, other than in my role as
8 general counsel, encompass responsibilities with
9 respect to the external affairs of the company.

10 Q. Give me an example of some of those external
11 affairs.

12 A. I have responsibility for the government
13 relations. I have responsibility for such public

14 relations as we conduct. And I have responsibility for
15 liaison with organizations outside the company that are
16 related to government relations and to industry
17 activities.

18 Q. What is involved with government relations?

19 A. I have responsibility for the relationship
20 with the company, with trade associations that conduct
21 government relations on our behalf, or that are
22 involved with information-gathering with respect to
23 government activities and legislation.

24 Q. For example, if Congress is considering
25 legislation affecting the tobacco industry, how do you

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1 get involved?

2 A. I am kept up-to-date and make it a point to
3 be knowledgeable about that activity through a variety
4 of sources, including trade associations.

5 Q. Are you involved with lining up witnesses and
6 deciding who would be appropriate witnesses to testify
7 before various committees of Congress?

8 A. Not on a direct basis, but in connection with
9 trade associations, I may be involved.

10 Q. How would you be involved?

11 A. I would be -- I would be advised as to what
12 the plans were for a legislative array of witnesses and
13 what the scope of the testimony which would be covered
14 might be. Things of that sort.

15 Q. What would your input be?

16 A. It would depend upon the legislation and the
17 questions that were put to me.

18 Q. As a practical matter, do you have the
19 authority to say, you know, we shouldn't use Expert A,
20 we should use Expert B, that kind of thing?

21 A. The lines in my experience have never been so
22 clearly drawn that that would be solely my decision.

23 Q. Now, when you talk about government
24 relations, do I understand correctly that includes the
25 federal level, the state level and the local level?

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1 A. That's correct.

2 Q. Give me an example of how you would get
3 involved at the local level.

4 A. In the same fashion as I just described to
5 you that I would be involved at the federal level.

6 Q. Dealing with a lawyer, it is hard to get
7 specific, but I'm going to do my best. For example,
8 the Los Angeles restaurant ban on smoking, obviously,
9 before that law was enacted in Los Angeles, it was
10 considered for a period of time. How are you involved
11 in that?

12 A. I received information as to the scope of the
13 proposed legislation. I reviewed with others the
14 strategy and the plans for responding to it.

15 MR. ROSENBLATT: Continue your answer on Line

16 13.

17 A. The strategy was, in general, to present
18 witnesses and statements that would point out the lack
19 of need for the proposed regulation and the extent to
20 which it was unwarranted, and, in general, to state
21 opposition to it as being an unnecessary accommodation.

22 Q. What was the thrust of the argument as to why
23 Los Angeles should not pass a law banning smoking in
24 all restaurants?

25 A. I don't recall.

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1 MR. ROSENBLATT: Page 30, Line 10.

2 Q. Are you a smoker?

3 A. I am not.

4 MR. ROSENBLATT: We go to Page 42, Line 20.

5 Q. You said that certain information was out
6 there in the public domain concerning the issue of
7 smoking and health. In your capacity as vice president
8 of Lorillard, on the board of directors of the Council
9 for Tobacco Research, what information is out there?
10 Is smoking healthy or bad for you?

11 A. I think the general public has an awareness,
12 reinforced over many, many years, of the statistical
13 association that is out there with respect to cigarette
14 smoking and health.

15 Q. That is not what I asked you, Mr. Stevens. I
16 asked you, from your standpoint, is smoking healthy or

17 unhealthy?

18 A. Well --

19 Q. Is it good for you? Is it neutral? Is it
20 bad for you?

21 A. I am saying to you, I understand that there
22 is a considerable body of information, statistical
23 information, that associates cigarette smoking with
24 certain diseases, but that the actual cause of many of
25 the diseases associated with cigarette smoking has not

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1 scientifically been proven.

2 And it is my understanding that that split of
3 view is well-known to the public and is the subject of
4 a great deal of discussion. It's at the very essence
5 of much of the government's program. It's at the
6 foundation of some of the warning notices, and that the
7 so-called smoking and health controversy is a well --
8 very well-known controversy.

9 MR. ROSENBLATT: Page 45, Line 12.

10 Q. Can you name me one doctor unconnected with
11 the tobacco industry who disagrees with the Surgeon
12 General's warnings?

13 A. I don't have a roster of doctors or
14 scientists by name who have opinions on that subject,
15 or any others.

16 Q. I am not asking you for a roster. I'm asking
17 you for one.

18 A. Well, a roster would include one or ten. I
19 don't keep a list of names.

20 Q. The warning on the packages, how many brands
21 does Lorillard make?

22 A. Five or six or seven.

23 Q. What are the major ones?

24 A. Kent, True, Newport, Old Gold, those are the
25 principal brands.

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1 Q. Which is the best seller today?

2 A. Newport.

3 Q. The warning that is on a package of Newport
4 that uses the word cancer, what does the warning say?

5 A. It is preceded by attribution to the Surgeon
6 General. It says: Warning, cigarette smoking causes
7 lung cancer, heart disease, emphysema. Perhaps not in
8 that order, but I think those are the diseases
9 specified in that warning notice.

10 Q. So even though that warning says that
11 cigarette smoking causes cancer, it does not say
12 anything about a statistical association. It says it
13 causes cancer, heart disease and emphysema.

14 You are saying that that is really not true,
15 has not been scientifically proven.

16 A. I said that the warning notice is attributed
17 to the Surgeon General. My understanding is that the
18 Surgeon General reaches that conclusion on the basis of

19 a compilation of studies that he performs periodically,
20 that it's not on the basis of tests, which
21 scientifically demonstrate the basic mechanism for the
22 cause of lung cancer; that it's a compilation of
23 studies, that there are studies to the contrary.

24 Q. I'm simply asking you, from your standpoint
25 as vice president of Lorillard, the Surgeon General's

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1 warning that is on Lorillard products which says
2 cigarette smoking causes lung cancer, heart disease,
3 emphysema and may complicate pregnancy, as far as you
4 are concerned, that is an untrue statement, based on
5 what you've already just told me?

6 A. I said to you, I think it's not based on
7 scientific tests that have demonstrated causation.

8 Q. Have you read any of the Surgeon General's
9 Reports?

10 A. I have read many of the Surgeon General
11 Reports.

12 MR. ROSENBLATT: Does anyone have the next
13 page?

14 MR. NEWSOM: 56.

15 MR. ROSENBLATT: 56. Page 56, Line 18.

16 Q. When did you first have any dealings with the
17 Council for Tobacco Research?

18 A. Almost immediately upon my coming with
19 Lorillard, in 1969.

20 Q. And what were those dealings?

21 A. A cognizance of the activities of CTR, an
22 awareness of what the Council was and what it did. And
23 I attended meetings of the Council for Tobacco Research
24 board of directors.

25 Q. When did you become a member of the board of

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1 directors of CTR?

2 A. I believe in 1979.

3 Q. '79?

4 A. I believe in 1979.

5 Q. Well, during the period from '69 to '79, did
6 you attend meetings?

7 A. Yes, I did.

8 Q. In what capacity?

9 A. In my capacity as general counsel to the
10 chief executive of Lorillard, who attended the meetings
11 as a member of the board of directors.

12 Q. Had you ever heard of CTR before you took the
13 job with Lorillard?

14 A. Not that I know of.

15 Q. When you first got involved with and
16 knowledgeable about CTR, who was the president of CTR?

17 A. I think it was Clarence Cook Little.

18 Q. What was Mr. Little's background?

19 A. My understanding is he was a scientist. His
20 precise discipline I don't know, although I think he

21 was a biologist. He had been an award-winning
22 designee, I think, at the Woods Hole Laboratories.
23 Q. Who was president after Mr. Little?
24 A. I think Dr. Gardener William Gardener.
25 Q. What was his background?

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1 A. He was -- I don't recall whether Dr. Gardener
2 was a Ph.D or M.D., but his specialty was cancer
3 research, as I recall.
4 He had been president of the International
5 Cancer Union, or I may have the title wrong, but it was
6 a prestigious cancer research entity.
7 Q. What institute was Dr. Gardener connected
8 with, if any? Medical school? Hospital?
9 A. I don't recall.
10 Q. How about Mr. Little, do you know what
11 institution he was associated with?
12 A. He was not a medical doctor.
13 Q. No, I understand.
14 A. As far as I know, his prior connection had
15 been to Woods Hole. He may have been in the
16 government. I am not sure. I am not certain.
17 MR. ROSENBLATT: Page 60, Line 5.
18 Q. In 1969, what was your understanding of
19 the purpose of CTR?
20 A. To fund independent scientific research into
21 tobacco use and health, with funds supplied by the

22 tobacco industry, through a procedure of principally
23 grants and aid to independent researchers to
24 communicate -- to investigate that subject and
25 communicate it to the public.

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1 Q. Has that role changed any, right up until the
2 present time?

3 A. No, not to my knowledge.

4 Q. That is still essentially the function?

5 A. Yes, sir.

6 Q. How is that information communicated to the
7 general public?

8 A. In a variety of ways. The research grants
9 are published in peer review publications by the
10 investigators. The Council for Tobacco Research issues
11 an annual report, with an abstract of all of the
12 investigations which have been the subject of
13 publication during that year.

14 That report is widely disseminated to
15 scientific and academic institutions and libraries.
16 It's the subject of a press release to the general
17 media by the Council.

18 In many instances, the institution of which
19 the grantee -- with which the grantee is affiliated,
20 will publish the work or will publicize its
21 publication.

22 I understand that frequently the peer review

23 publication itself will publicize, or feature in press
24 releases and communications to the medical and
25 scientific community, the fact that the work has been

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1 published.

2 In many instances the investigator, in
3 addition to publishing his work -- and I emphasize that
4 it's in peer review publications -- will frequently
5 make it the subject of a presentation of medical and
6 scientific information.

7 And it's not unusual for a CTR grantee's
8 publication to be the subject of general media
9 attention. New York Times, Wall Street Journal, things
10 of that sort.

11 Q. When was the Council for Tobacco Research
12 originally formed, even if it may have had a different
13 name at one time?

14 A. I learned in 1969 that it had been formed in
15 1954.

16 Q. And is it your understanding that its
17 charter, its mandate, its purpose, has been essentially
18 the same from 1954 until today?

19 A. Yes, sir.

20 Q. Well, are they any closer to answering the
21 fundamental question as to whether or not cigarette
22 smoking causes disease?

23 A. They are no further away, nor closer than any

24 other part of the scientific or medical community is.
25 It's an ongoing subject. It receives a great deal of

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1 time and attention of the medical community and the
2 scientific community, not just CTR.

3 Q. When do you think there's going to be an
4 answer to the question, does cigarette smoking cause
5 lung cancer, to be specific? Do you think there will
6 ever be an answer?

7 A. I have no idea. I am not able to
8 crystal-ball the future of science.

9 Q. My goodness, I mean, that's almost 40 years.
10 They're still spending millions of dollars. We are
11 still researching. We still don't have an answer.

12 In your opinion, although not in the mind of
13 the Surgeon General, but in your opinion and the
14 opinion of the tobacco industry, there is still not a
15 definitive answer as to whether or not cigarette
16 smoking causes lung cancer or heart disease; is there?

17 A. No. But no more so than there is an answer
18 as to what causes a whole host of other types of
19 cancer. The subject of causation of cancer is an
20 extremely complex issue, one that we all hope will be
21 solved in our lifetime.

22 MR. ROSENBLATT: Page 64, Line 6.

23 Q. Obviously if it were proven and established
24 in the public mind 100 percent that cigarette smoking

25 does, in fact, cause cancer, heart disease and other

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1 diseases, that would hurt business; wouldn't it?

2 A. It might.

3 MR. ROSENBLATT: Line 19.

4 Q. Is there anything on the horizon that you
5 see, where you know within a year or two or five years,
6 through all of the money being spent and all of the
7 grants being issued by CTR, that there is going to be a
8 definitive answer to that question?

9 A. I am unable to answer that question. I am
10 not involved in every research in every laboratory and
11 every bench, either in connection with the CTR-funded
12 work or any other work.

13 Q. But the CTR is, according to your
14 understanding, presently aggressively researching that
15 very issue, does cigarette smoking cause cancer, heart
16 disease and other diseases?

17 A. Let me make clear that CTR itself does not do
18 any research. It funds independent research by our
19 grantees.

20 Yes. Yes, sir, that is being, amongst other
21 issues, aggressively researched.

22 Q. Okay. Would you say, if you had to say the
23 chief focus -- and I understand that CTR itself does
24 not do the research, it issues grants, but would you
25 say that that is, in fact, and always has been the main

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1 focus of CTR, to really answer that question, try to
2 answer that question in a definitive way, and really
3 has not done it as yet?

4 A. The CTR's research program is not limited to
5 cancer research.

6 MR. ROSENBLATT: Page 66, Line 4.

7 Q. My question was, the focus of the CTR is on
8 the question of, does cigarette smoking cause cancer,
9 heart disease and other diseases. I'm talking about a
10 broad spectrum.

11 A. The CTR's program is directed to a variety of
12 diseases, which are asserted to be related to cigarette
13 smoking. They include cancer, heart disease,
14 respiratory infection.

15 Q. And that was the focus of the CTR from 1954
16 until today: Does cigarette smoking cause disease?

17 A. Yes. And it extends beyond lung cancer,
18 heart disease and emphysema. That is my point. The
19 scope of the research extends beyond those diseases
20 that you have enumerated.

21 Q. Well, what other diseases are associated with
22 cigarette smoking, other than cancer and heart disease?

23 A. Well, I can -- I would rather tell you that
24 the CTR focuses on heart disease, respiratory,
25 circulatory problems, physiology, immunology,

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1 biochemistry, cell biology, rather than the diseases.

2 Those are the mechanism that they are examining.

3 MR. ROSENBLATT: Page 69, Line 19.

4 Q. The Council for Tobacco Research has its main
5 office where?

6 A. Here in Manhattan.

7 Q. How far is your office from that office?

8 A. 20 blocks, 23 blocks.

9 Q. How often do you have occasion to physically
10 be at the CTR offices in Manhattan?

11 A. Almost, without exception, I would say twice
12 a year, perhaps three times.

13 Q. And what are those occasions when you go
14 there?

15 A. Attendance at board of directors' meetings or
16 an annual meeting for the Council for Tobacco Research.

17 Q. What is the purpose of the board of
18 directors' meetings?

19 A. To conduct the business of the board as it
20 relates to the Council.

21 Q. Well, what is the business of the board as it
22 relates to the Council?

23 A. Similar to that of the board of directors of
24 any other organization. It oversees its general
25 purpose and function. It has some ministerial and

1 fiscal responsibilities.

2 Q. Does anyone else from Lorillard, other than
3 you, attend the board of directors' meetings of CTR?

4 A. Yes, sir.

5 Q. Who?

6 A. Dr. Alex Spears.

7 Q. Anyone else?

8 A. No, sir.

9 Q. Mr. Tisch does not go?

10 A. He does not.

11 Q. Who attends for RJ Reynolds?

12 A. Whoever their representatives on the board of
13 directors happens to be, from time to time.
14 Occasionally, perhaps one of their counsel.

15 By the way, I can't assert unequivocally that
16 Mr. Tisch has never attended, but I do not recall that
17 he has.

18 Q. Who are the members of the board of directors
19 of the Council for Tobacco Research?

20 A. They are executives from each of the tobacco
21 companies which support the Council financially.

22 Q. And those tobacco companies are, in addition
23 to Lorillard, who else?

24 A. Philip Morris, Reynolds, Brown & Williamson,
25 and American Tobacco. And there are some additional

1 growers' groups of tobacco leaf, wholesalers' groups.
2 But you asked for and I supplied you with the names of
3 the cigarette manufacturing companies.

4 MR. ROSENBLATT: Page 73, Line 17.

5 Q. Does every other company usually send two
6 people, as a practical matter, to the board of
7 directors?

8 A. Generally, yes.

9 Q. Okay. Now, in the case of Lorillard, neither
10 you, nor Dr. Spears, are president or CEO?

11 A. That is correct.

12 MR. ROSENBLATT: Next page is 81, Line 10.

13 Q. What was the amount of the last budget for
14 CTR?

15 A. Approximately \$26 million.

16 Q. Has that been fairly consistent within the
17 last four or five years?

18 A. Certainly within the last three or four
19 years. Whether five or six -- over the last number of
20 years.

21 Q. Who is the number-two person at CTR after
22 Dr. Glenn, if you know?

23 A. I am drawing a blank on the name of the
24 scientific director. It will come to me.

25 Q. McAllister?

1 A. Yes. Harmon McAllister.

2 MR. ROSENBLATT: Page 83, Line 3.

3 Q. Other than attending the meetings of the
4 board of directors of CTR, what other connection do you
5 have with CTR?

6 A. Other than in my capacity as a member of the
7 board of directors?

8 Q. No. Other than attending meetings. I mean,
9 if in your capacity of being on the board of directors
10 you do other things in connection with CTR, that's what
11 I'm asking you.

12 A. I have no involvement with the CTR, other
13 than in my capacity as a director. My other
14 involvements -- I have no other involvements that
15 extend beyond my participation in board meetings.

16 My participation in a preliminary budget
17 review, from time to time I will get a telephone call
18 from Dr. Glenn with respect to an aspect of the CTR
19 program that relates to my role as a director, and he
20 does not want to convene a meeting, and he has an
21 administrative or ministerial matter.

22 This year I'm serving as chairman of a
23 committee of the CTR board of directors, known as the
24 Compensation and Succession Committee, which deals with
25 essentially compensation for those staff members at CTR

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1 whose salaries are above the level which is delegated
2 to the responsibility of Dr. Glenn.

3 Q. Explain that.

4 A. Dr. Glenn has -- has authority for salary
5 increases -- excuse me.

6 Dr. Glenn has authority for salary increases
7 for staff members beyond -- below a certain level, and
8 anything above that he needs to get approval from the
9 board of directors. He does that by first reviewing it
10 with this Compensation and Succession Committee, who
11 makes decisions on the basis of their consideration and
12 act for the board in that regard.

13 Q. Who else is on the Compensation and
14 Succession Committee?

15 A. Mr. Campbell of Philip Morris, Mr. James
16 Johnston at Reynolds, Mr. Don Johnston at American,
17 Mr. Tom Sandifur at Brown & Williamson.

18 Q. Is Dr. Glenn at the New York office five days
19 a week on a regular basis, as far as you know?

20 A. No, sir, he is not. His duties -- his duties
21 require about 140 days a year total, most of which -- I
22 would say about 120 of which are spent at the New York
23 office. The other 20 are spent in CTR-related travel
24 and business.

25 Q. Have you ever known Dr. Glenn before he took

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1 the role as president?

2 MR. SILVERMAN: Skip Line 11?
3 MR. ROSENBLATT: Yes.
4 A. I have not met him personally.
5 Q. What is --
6 A. I am sorry. Before his position at CTR as --
7 Q. President?
8 A. Yes. I knew him in his prior position at CTR
9 as scientific director.
10 Q. It was in that capacity that you first met
11 him?
12 A. That is correct.
13 Q. What is the status --
14 MR. ROSENBLATT: No. Oh, yes. Is that
15 included, Judge, the last question on Page 85?
16 THE COURT: Let me see where you are. Let me
17 get mine.
18 85. The last question on 85. What page are
19 you on?
20 MR. ROSENBLATT: 85.
21 THE COURT: I don't have anything marked on
22 Page 85.
23 MR. NEWSOM: Line 25 might have been
24 designated, but it appears --
25 THE COURT: Who are we doing here, Stevens?

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1 MR. ROSENBLATT: Yes.
2 THE COURT: I'm sorry. I had the wrong one.

3 Let me take a look.

4 MR. ROSENBLATT: I guess I can just pick
5 up --

6 THE COURT: Yes.

7 MR. ROSENBLATT: On Page 87, Line 6.

8 THE COURT: Yes. Right.

9 MR. ROSENBLATT: I don't know if yours is
10 marked, but in terms of your answer --

11 MR. SILVERMAN: Yes. It is.

12 MR. ROSENBLATT: -- you would stop on -- it
13 is marked. Okay.

14 Q. What is the special projects division of CTR?

15 A. All that I know about the special projects
16 division of CTR, in my role as a CTR director, was that
17 such a division existed.

18 Q. Well, at the various board of directors
19 meetings of CTR, certainly the work of the special
20 projects division would be discussed from time to time;
21 wouldn't it?

22 A. No.

23 Q. This never came up?

24 A. Other than a reference to it being -- in the
25 context of its inclusion in a separate financial

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1 statement reference, there was no discussion of CTR's
2 special projects at the CTR board of directors'
3 meetings, of which I have any knowledge.

4 Q. So you are telling me that as a member of the
5 board of directors of CTR, other than knowing that
6 there was such a thing as the special projects
7 division, you had no idea in that capacity -- you had
8 no idea of what the special projects division did or
9 what its purpose was?

10 A. In that capacity, that is correct.

11 MR. ROSENBLATT: Next page, do you have 115?

12 MR. NEWSOM: 115, Line 2.

13 MR. ROSENBLATT: Okay. Page 115, Line 2.

14 Q. How much money do you figure the tobacco
15 industry spent on advertising in the last decade?

16 A. In the last decade?

17 Q. Yes.

18 A. I don't know that I can do that calculation.
19 Hundreds and hundreds of millions of dollars.

20 Q. Probably -- certainly over a billion, you
21 would think?

22 A. Perhaps.

23 Q. Are you familiar with the history of tobacco
24 advertising, for example, when they used very popular
25 figures, sports figures, Hollywood figures, musical

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1 figures, Arthur Godfrey?

2 A. I have some familiarity with that history.

3 Q. What is your -- for example, did Ted
4 Williams, Joe Di Maggio, Stan Musial, advertise

5 cigarettes?

6 A. Some of them did. Whether you correctly
7 identified all of them, I have no idea.

8 Q. Well --

9 A. Some of them did.

10 Q. Tell me, based upon your experience in this
11 industry, who are some of the major sports figures who
12 used to be commonly identified with cigarette
13 advertising?

14 A. Oh, I wouldn't attempt to give you a list.
15 If you want to ask me whether I recall a specific
16 sports figure as being someone who advertised
17 cigarettes, I would be happy to tell you my
18 recollection, but I wouldn't attempt to give you such a
19 list.

20 Q. Okay. Di Maggio?

21 A. I have no idea.

22 Q. Williams?

23 A. I don't know.

24 Q. Can you name a single figure that you are
25 sure advertised cigarettes?

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1 A. Not in the sports world. None that spring to
2 mind at the moment, but I don't deny that there were
3 some.

4 Q. I know you don't.

5 How about Hollywood people?

6 A. Well, you mentioned Arthur Godfrey. I
7 certainly remember him.

8 Q. What did he advertise?

9 A. Chesterfields.

10 Q. What did he die of?

11 A. I think the press reports were that he died
12 of cancer.

13 Q. Lung cancer?

14 A. Perhaps.

15 Q. Okay.

16 MR. ROSENBLATT: Page 121, Line 18.

17 Q. Well, I mean, you're telling me that in the
18 '50s and the '60s, that you used celebrity
19 endorsements, and then for about 30 years the tobacco
20 industry does not use those kinds of endorsements, and
21 I am saying, why did they stop?

22 A. For the same reason that other advertising
23 practices change. They go out of vogue. They are no
24 longer popular or effective.

25 And, in addition, I suggested to you that

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1 there was governmental and other public expression of
2 unhappiness with that kind of advertising. So, in
3 response to some public demand, we stopped doing it.

4 MR. ROSENBLATT: Page 123, Line 19.

5 Q. What is the strategy of the tobacco industry
6 to replace all of the smokers who have quit in the last

7 several years?

8 A. Lorillard has no strategy for replacing, as
9 you describe it, lost smokers. So I can't answer your
10 question beyond that.

11 Q. Why do you --

12 A. I don't speak for the industry.

13 MR. ROSENBLATT: And going to Line 20.

14 Q. Does Lorillard mention in its advertising
15 that some brands are lower than others in tar and
16 nicotine?

17 A. In some of Lorillard's advertising, it
18 engages in comparatives of tar and nicotine levels,
19 yes.

20 Q. Why do they do --

21 A. Or has. Whether it's currently, I don't
22 recall.

23 Q. Why do they do that?

24 A. To point out the contrasts between the
25 availability of brand varieties that customers or

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1 existing smokers can choose from, as opposed to ours.

2 Some people like a higher tar and nicotine.

3 Some people like a lower tar and nicotine. Some people
4 like a middle. So we like to let them know what is
5 available.

6 Q. What is the significance of low tar and
7 nicotine? Why mention it? What am I, as the consumer,

8 supposed to think? Your brand is ten milligrams lower
9 in tar than the brand I am smoking now? So what?

10 A. The consumers of cigarettes have demonstrated
11 that they like available to them a variety of product,
12 at different tar and nicotine levels, for a variety of
13 reasons, in terms of what they think tar and nicotine
14 level delivers to them.

15 Q. It's not the advertising that stresses low
16 tar and nicotine, saying to the consumer that somehow
17 low tar and nicotine cigarettes are less dangerous than
18 high tar and nicotine cigarettes?

19 A. Absolutely not.

20 Q. So, in other words, the advertising that
21 focuses on low tar and nicotine, according to you, has
22 zero to do with health concerns?

23 A. That is correct.

24 Q. Okay. Does low tar and nicotine, middle tar
25 and nicotine, high tar and nicotine, do they affect

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1 taste? Is that your understanding?

2 A. I am told, in part, they do, yes.

3 Q. Who are you told that by?

4 A. From what I have read in the general
5 literature. From what I know from our marketing people
6 and our production people.

7 Q. So that it is your impression and your
8 understanding that some people, simply by virtue of the

9 taste and enjoyment, prefer a higher tar or lower tar?

10 A. Yes.

11 Q. That's what it's all about?

12 A. Yes.

13 MR. ROSENBLATT: Page 133, Line 22.

14 Q. How do you answer that very fundamental
15 question, as someone being in the tobacco industry for
16 25 years, does cigarette smoking cause cancer?

17 A. If you are asking me if, as a matter of
18 absolute scientific truth cigarette smoking causes lung
19 cancer or any other diseases, the answer is I don't
20 know. If you're asking me for whether the statistical
21 and epidemiological data that is used to support the
22 statistical association of cigarette smoking with other
23 diseases is valid, I would say that the information
24 exists.

25 I don't think it demonstrates scientifically

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1 that there is causation. But I can't tell you as a
2 matter of absolute truth whether cigarette smoking
3 causes lung cancer. I don't think it does.

4 Q. You don't think it ever does? You don't
5 think cigarette smoking has ever caused lung cancer to
6 a particular individual?

7 A. I don't know that. I don't think it does.
8 It has not been scientifically demonstrated in a
9 conclusory fashion to me that it does. I don't know

10 whether it does or whether it doesn't. I don't think
11 it does.

12 Q. What would I have to do or what would science
13 have to do to prove causation to you where you would
14 finally say, okay, I am convinced?

15 A. There would have to be sufficient scientific
16 evidence based upon large-scale animal studies, of the
17 respiratory system, that demonstrated that the basic
18 causal mechanism of cancer was attributable to
19 cigarettes.

20 That kind of study would have to be
21 sufficiently replicated, because I am told that and
22 understand that scientific studies, in order to be
23 valid, have to be of large enough sample and have to be
24 replicated.

25 If that can be demonstrated to others who

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1 make scientific judgments, and they could convince me
2 that that evidence was sound and conclusive, I might
3 then be convinced that the answer to your question is
4 that cigarette smoking causes the disease.

5 Q. Has the Council for Tobacco Research done
6 that study or issued a grant to do that study?

7 A. My understanding is that the Council has
8 sponsored a study that addresses -- that addressed that
9 issue, a long-range, long-term study, and that the
10 results that were achieved were negative; that is, they

11 did not demonstrate a causal connection.

12 Q. What is the name of that study or the
13 institution where it was performed, or the researchers?

14 A. My understanding is that that was a project
15 performed by Microbiological Associates.

16 Q. Associated where?

17 A. I think in Baltimore, but I am not sure.

18 Q. Where was that study published, the results
19 of it?

20 A. I don't know. It was published and it was
21 the subject of publicity by the Council for Tobacco
22 Research.

23 Q. When?

24 A. Sometime, I believe, in the early '80s.

25 MR. ROSENBLATT: Page 146, Line 6.

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1 Q. Is smoking an addiction?

2 A. I don't think so.

3 Q. Have you ever known an individual who tried
4 very hard to give up smoking but who was unable to do
5 so?

6 A. I have -- I have not.

7 Q. How many people over the years have you known
8 who have quit smoking?

9 A. I personally?

10 Q. Yes.

11 A. I couldn't give you a number. A lot.

12 Q. And it is your testimony that, to the best of
13 your recollection, every one of them simply made a
14 decision to quit, and they were able to successfully do
15 that without having to see a doctor or attend a course
16 or anything of the kind?

17 A. I have never done a survey of the people
18 within my acquaintance who have stopped smoking, as to
19 what methods they used, so I can't answer your
20 question.

21 I've never had anybody come to me and say I
22 did this, this, or that to stop smoking.

23 Q. So you really don't know what people went
24 through to successfully be able to stop smoking?

25 A. That is true of people within my

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1 acquaintance.

2 Q. Is alcoholism an addiction? Do you think
3 certain people become addicted to alcohol in the sense
4 that once they take that first drink, they really can't
5 stop themselves and they will drink to excess?

6 A. I am not qualified to talk about whether a
7 first drink is a threshold level for addiction or
8 anything else.

9 I have read information that indicates to me
10 that alcoholism, in many people, is an addiction.
11 Whether that is true with respect to everybody or not,
12 I don't know.

13 And my pause there is because I have also
14 read a great deal that indicates that alcoholism is
15 frequently genetic. Therefore, I don't know whether it
16 relates to beginning or level of consumption.

17 Q. So how do you answer the question, is alcohol
18 addictive to some people?

19 A. I don't know, but I expect it may be.

20 Q. Is nicotine addictive to some people?

21 A. I don't think it is.

22 MR. NEWSOM: 158.

23 MR. ROSENBLATT: 158, Line 10.

24 Q. Have you been satisfied with the performance
25 of Dr. Glenn?

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1 A. Completely.

2 Q. How often do you have occasion to have
3 contact with Dr. Spears?

4 A. On a very regular basis.

5 Q. Daily, weekly?

6 A. Not daily. Sometimes three times in one day
7 and then not for two days.

8 Q. But I take it, it would certainly be rare for
9 a week to go by and you to have zero contact with him?

10 A. That would be right.

11 MR. ROSENBLATT: Page 159, Line 18.

12 Q. What is Dr. Spears' area of expertise?

13 A. I believe I have testified earlier that I

14 think he is trained as a chemist. He has, I believe, a
15 good deal of expertise, training and experience in
16 statistics.

17 He is a tobacco chemist, and he, as I
18 testified earlier, is -- did you ask what his
19 responsibilities were or what his expertise was?

20 Q. Expertise.

21 A. It is as I have just described.

22 Q. What are his responsibilities?

23 A. I think I testified earlier, he is the senior
24 officer at our Greensboro operation. He has, I
25 believe, operations, as well as research and

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1 development, reporting to him. And he has
2 responsibilities with respect to our international
3 sales business.

4 MR. ROSENBLATT: Page 161, Line 17.

5 Q. Is he a statistician? You indicated he has
6 some --

7 A. I don't think he has credentials as a
8 statistician. I think he has some background education
9 in it.

10 Q. And he has a Ph.D in chemistry?

11 A. Either chemistry or biology. And I believe
12 it is chemistry, but I am not positive.

13 MR. ROSENBLATT: Page 162, Line 23.

14 Q. When you deal with the Tobacco Institute, how

15 frequently do you deal with them?

16 A. That really depends upon -- I deal with them
17 on a regular basis. It really depends upon how active
18 the legislative calendar is.

19 Q. When you deal with the Tobacco Institute, is
20 there a particular individual you deal with most often?

21 A. I deal with a number of people there. I
22 probably deal with the president of the Tobacco
23 Institute more often than any other single person.

24 Q. And after the president, who would you deal
25 with most frequently?

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1 A. That really depends upon what the subject
2 matter is and who at the Tobacco Institute at the time
3 has responsibilities for the area in which I have an
4 interest.

5 Q. Would you say you have weekly contact with
6 the president of the Tobacco Institute?

7 A. Most weeks.

8 Q. How often do you see the president of the
9 Tobacco Institute personally?

10 A. Perhaps six, eight, ten times a year. Some
11 years six; some years eight; some years ten.

12 Q. Is it accurate to characterize the Tobacco
13 Institute as the communicator for the tobacco industry
14 to the public, to the media?

15 A. As the trade association for the tobacco

16 industry, communications are part of the mission of the
17 Tobacco Institute.

18 Q. Would you say it's a primary mission?

19 A. No.

20 Q. What is their primary mission?

21 A. Legislation.

22 Q. In what sense? What are they doing with
23 respect to -- I mean, the answer would seem obvious,
24 but I want to hear you say it.

25 A. They actively lobby on behalf of the industry

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1 with respect to federal, state and local legislation.

2 Q. They lobby in the sense of --

3 A. They lobby and coordinate lobbyists and
4 engage others to lobby.

5 MR. ROSENBLATT: We pick up Line 25, Page
6 164.

7 Q. Does the Council for Tobacco Research
8 communicate its findings in its annual report and its
9 research conclusions to the Tobacco Institute?

10 A. I don't know that it makes any special or
11 different communication to the TI. That would be
12 different than the communication it otherwise makes to
13 the public.

14 I know of no other communication.

15 I testified earlier that CTR communicates its
16 results in a variety of ways, a number of which are

17 public communications. Those reach the Tobacco
18 Institute, as well.

19 Q. Well, wouldn't CTR want the Tobacco Institute
20 personnel to be aware of their research findings?

21 A. CTR and the Tobacco Institute are completely
22 separate and independent organizations of one another.

23 Q. Yes. I'm not really disputing that, but
24 don't they talk to each other and communicate with each
25 other?

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1 A. I don't know that there is -- I don't know
2 the communication between the two. It's my sense that
3 there is not a great deal, if any, that is not
4 otherwise also the subject of public communication by
5 the CTR.

6 MR. ROSENBLATT: We pick up on Line 12, Page
7 166.

8 Q. Why does the tobacco industry need a trade
9 association? In other words, why can't Lorillard do
10 its thing and Philip Morris do its thing?

11 A. For the same reason that any industry elects
12 to deal with respect to its legislative agenda through
13 a trade association so that it can be coordinated, so
14 that it can be orderly, so that it can be efficient,
15 and so that it can be addressed to the constituency
16 that it has to be addressed to in an efficient,
17 reasonable fashion.

18 Lots of industries have trade associations.

19 MR. NEWSOM: 172.

20 MR. ROSENBLATT: 172, Line 3.

21 Q. You would agree, would you not, that the
22 members of the Scientific Advisory Board don't know
23 anything about the special projects division?

24 A. I don't know. I have never had a discussion.
25 Therefore, I have no firsthand knowledge with an SAB

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1 member as to their knowledge of CTR's special projects.

2 Everything else --

3 MR. NEWSOM: No.

4 MR. ROSENBLATT: No, no. Stop there. Okay.
5 173, Line 6.

6 Q. The people that have knowledge of the special
7 projects division are lawyers and the top executives;
8 isn't that correct?

9 A. My knowledge of the CTR special projects
10 function, not division, because there is no division
11 that I am aware.

12 Q. It's just called special projects?

13 A. I believe so.

14 Q. Okay.

15 A. My knowledge of that, as a director, informs
16 me that those who are familiar with CTR's special
17 projects are lawyers. To the extent that executives,
18 nonlawyers at Lorillard have knowledge of CTR's special

19 projects, they have that knowledge from me in my
20 capacity as general counsel.

21 MR. ROSENBLATT: Page 178, Line 3.

22 Q. Who are the individuals at Lorillard who have
23 the most technical knowledge on the issues of tobacco
24 and health?

25 A. Dr. Spears.

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1 Q. Who would be the number-two person in that
2 category, after Dr. Spears?

3 A. Perhaps Dr. Norman or others in the research
4 and development area.

5 Q. What individual or individuals at Lorillard
6 would have the most knowledge about these special
7 projects at CTR, other than you?

8 A. Other than me?

9 Q. Well, you are not telling me.

10 A. I testified, to -- I testified earlier that
11 such information as any other executive at Lorillard
12 has about special projects, they would have learned
13 from me in my capacity as general counsel.

14 Q. I am not asking you what you told them, but
15 who are those individuals?

16 A. It would be Dr. Spears and perhaps, from time
17 to time, the then-chief executive.

18 Q. And certainly, you would have told Andrew
19 Tisch?

20 A. He is the chief executive.

21 Q. Who at Lorillard, other than you, would know
22 the most about the 1,500 documents of the special
23 projects division of CTR?

24 A. Other lawyers.

25 MR. ROSENBLATT: Page 180, Line 19.

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1 Q. The special projects division of CTR has been
2 in existence a long time. All I am asking you for now
3 is to tell me the name of any individual at Lorillard,
4 who is not an attorney, who you would figure would know
5 about the background, the history, the purpose. Who
6 would know most about special projects?

7 A. I believe I testified to that earlier. I
8 said Dr. Spears and chief executives.

9 MR. ROSENBLATT: Page 182, Line 7.

10 Q. Well, name one prestigious organization, such
11 as the American Cancer Society, the American Heart
12 Association, the American Lung Association, who agrees
13 with the tobacco industry position that, gee whiz,
14 after all these years, the studies are lousy, they are
15 statistical, they are risk factors, and causation has
16 not been proven. Who is saying that in America, other
17 than the tobacco industry?

18 A. Well, I don't know that I can recite it
19 chapter and verse, but my understanding is that even
20 the very first Surgeon General's Report in 1964, which

21 cited epidemiological studies, said that
22 epidemiological studies did not demonstrate scientific
23 cause.

24 My understanding is that there have been
25 similar pronouncements by other organizations and other

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1 doctors and other scientists.

2 I cannot give you a listing of who they are.

3 MR. ROSENBLATT: Page 184, Line 22.

4 Q. In some 40 years of funding studies by the
5 Council for Tobacco Research, has it been established
6 that cigarette smoking causes any disease?

7 A. My familiarity with the research results from
8 the CTR stems from 1969 on.

9 I can't recite for you the chapter and verse
10 of the results from any of the research published, as a
11 result of CTR funding. So I am unable to answer your
12 question.

13 Q. But, I mean, that is a pretty basic question.
14 And initially I am asking it conceptually, not for the
15 name of any particular study, but whether there has
16 been a single study ever funded by CTR or, since 1969,
17 that has ever established that cigarette smoking causes
18 any disease.

19 A. That has established that causes any disease?

20 Q. Any disease, any condition or disease.

21 A. It may very well be, but I don't know what it

22 is.

23 MR. ROSENBLATT: Does anyone have the next
24 page?

25 MR. NEWSOM: The next page I see is 198.

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1 MR. ROSENBLATT: Yes. 198, Line 5.

2 Q. Who at Lorillard could answer that question
3 without asserting the attorney-client privilege?

4 MR. NEWSOM: Your Honor, could we approach
5 for just a second? I'm not sure --

6 THE COURT: All right. Let me just take a
7 look and see what page you're on.

8 MR. ROSENBLATT: 198.

9 THE COURT: I'll look at my copy.
10 Discuss it or just give you instructions?
11 (The following proceedings were had at
12 sidebar:)

13 THE COURT: Who can answer the question?
14 Lines 5 through 7, Page 198.

15 MR. NEWSOM: But I think --

16 THE COURT: Now the answer is --

17 MR. NEWSOM: But that question refers back to
18 1996, special projects.

19 THE COURT: No. Let's hear the question
20 again.

21 Okay. The question is --

22 MR. NEWSOM: That's the problem. See, this

23 is --

24 THE COURT: Page what?

25 MR. NEWSOM: The last reference before that

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1 has to do with special projects, and you excluded that.

2 It makes no sense. Just exclude the question
3 and answer.

4 THE COURT: What question are you referring
5 to?

6 MR. ROSENBLATT: The question on Page 195,
7 Line 19.

8 THE COURT: Okay. So that --

9 MR. NEWSOM: That was excluded.

10 THE COURT: That was excluded, yes.

11 MR. ROSENBLATT: It's very instructive. He's
12 answering that and saying no one could answer that
13 without my assertion.

14 THE COURT: I'm trying to figure out --
15 that's because he said special projects.

16 So, then the question was: Who could answer
17 the question? The reason I excluded it here was
18 because on 195 -- because he said based upon him.

19 At that point -- see, at this point I'm going
20 to exclude it because he says: I learned it in my
21 official capacity, so I excluded the question.

22 Now he's saying: Does anybody else have that
23 answer? Who at Lorillard could answer that question,

24 without asserting --

25 MR. HEIM: The question --

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1 MR. NEWSOM: That question was things that
2 are being excluded.

3 THE COURT: It's this question.

4 MR. NEWSOM: It's out.

5 THE COURT: I know it's out only because he
6 couldn't answer it, but somebody else might be able to
7 answer it.

8 MR. ROSENBLATT: He said no one could.

9 THE COURT: No one at Lorillard could answer
10 that question because they would consult with me as
11 general counsel.

12 Now, if that's the answer, then that would be
13 privileged also. So, it's all a privilege issue.

14 All right. So it's out.

15 MR. NEWSOM: Okay.

16 THE COURT: Okay.

17 So now you're back to Page 198, Line 19.

18 MR. NEWSOM: Yes.

19 MR. ROSENBLATT: Correct.

20 THE COURT: Okay.

21 (The sidebar conference was concluded, and
22 the following proceedings were held in open court:)

23 MR. ROSENBLATT: Okay. So we're on Page 198,
24 Line 19, where I'm asking the question.

25 Q. Hasn't the tobacco industry manipulated the

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1 Council for Tobacco Research through the special
2 projects category?

3 MR. ROSENBLATT: And then you go to answer
4 it, Line 6 on Page 199.

5 A. In my capacity as CTR director, I answer that
6 question as no.

7 Q. Could you explain that answer? Why is your
8 answer no?

9 A. Because as a member of the board of directors
10 of CTR, I have no indication that the CTR is
11 manipulated by anyone.

12 Q. Well, as a member of the board of directors
13 of CTR, you have no information about special projects;
14 do you?

15 A. That is not what I testified earlier. I said
16 I knew, as a member of the board of directors of CTR,
17 that CTR's special projects existed, and everything
18 else that I know about it, information and knowledge
19 about CTR's special projects, is in my role as general
20 counsel.

21 MR. NEWSOM: 203.

22 MR. ROSENBLATT: Page 203, Line 20.

23 Q. Was the special projects category in
24 existence when you joined Lorillard in 1969?

25 A. Yes.

1 MR. NEWSOM: That's it.

2 MR. ROSENBLATT: That's it, Judge.

3 THE COURT: Okay. All right. Now, we need
4 to talk again.

5 MR. SILVERMAN: Are you done with me?

6 THE COURT: For the time being, I guess.

7 Check with Mr. Rosenblatt.

8 (The following proceedings were had at
9 sidebar:)

10 THE COURT: Okay. So what do we have next?

11 MR. ROSENBLATT: We've got to go over
12 Fulford.

13 THE COURT: Yes, I know.

14 MR. ROSENBLATT: And the jury has been
15 sitting here over an hour and a half now.

16 THE COURT: They've been here from
17 10 o'clock, 10:20. We have to go over Fulford. That's
18 going to take some time.

19 Lunchtime. I guess I'm going to send them to
20 lunch. All right.

21 MR. MOSS: Why don't we stay here and do
22 Fulford?

23 MR. HEIM: That's what we're going to do.

24 MR. MOSS: Bring them back at 2:00.

25 THE COURT: Let's see how long.

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1 MR. MOSS: We might as well send them out
2 now.

3 THE COURT: I usually send them out until
4 1:30, and then we'll see what we have to do.

5 Because if I say 2:00, that backs us up. We
6 may be through.

7 MR. MOSS: That's what I mean.

8 THE COURT: I'll let them go until 1:30.

9 MR. MOSS: Or 1:45. I don't care. I'm
10 trying to avoid them coming here and sitting here for a
11 half hour.

12 THE COURT: They don't seem to mind.

13 MR. MOSS: Okay.

14 THE COURT: I mean, I'll tell you the truth,
15 if I let them go now, it's 20 to 12:00. What are they
16 going to do? Walk around town?

17 MR. MOSS: I just thought it would be better
18 doing that than sitting here. That was my only
19 concern. I don't care.

20 THE COURT: Bring them back at 1:30. Okay.

21 (The sidebar conference was concluded, and
22 the following proceedings were held in open court:)

23 THE COURT: Okay, folks. We're talking about
24 scheduling, and we're in that phase of the trial now
25 where we're doing a lot of work together. As I tried

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1 to explain over and over, you've seen me reading these
2 things while they've been reading those things. After
3 I read them, then we have to talk about it.

4 So that's what we're going to do. So that
5 gives you an extended lunch. 1:30. Okay.

6 Those of you who want to come back earlier
7 and go in there, that's fine.

8 1:30. Okay, folks.

9 (The jury exited from the courtroom.)

10 MR. ROSENBLATT: We need a little break,
11 Judge.

12 THE COURT: Yes. We're going to take a
13 break. I'm just finishing up Holbrook. Is it Holbrook
14 or Horrigan?

15 MR. ROSENBLATT: Horrigan.

16 THE COURT: Yes. I'm going through Horrigan
17 now.

18 MR. ROSENBLATT: Okay.

19 (A brief recess was taken.)

20 THE COURT: Okay. Does everybody have
21 Fulford?

22 MR. ROSENBLATT: Yes, Judge.

23 THE COURT: All right. Page 6, 24 and 25, no
24 objection.

25 Page -- I have two Page 6's.

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1 MS. LUTHER: Yes.

2 THE COURT: All right. The second page,
3 where the name is mentioned, no objection.

4 Page 7, 1 through 4, no objection. And
5 there's -- 5 and 6 are alternate designations, which is
6 okay.

7 MS. LUTHER: Right.

8 THE COURT: All right. Page 8. There's a
9 designation in green.

10 MS. LUTHER: What line is that on, Judge?

11 THE COURT: 9 -- page -- not 8. Page 9. I'm
12 sorry.

13 Page 9, Line 3 through 25.

14 MS. LUTHER: Right.

15 THE COURT: Granted.

16 10. Page 10, Line 1 through --

17 MR. HEIM: Page 9 is in or out?

18 MS. LUTHER: In.

19 MR. HEIM: In, did you say?

20 THE COURT: Which page?

21 MR. HEIM: I couldn't hear you. I'm sorry.
22 Page 9?

23 THE COURT: Page 9, I granted that.

24 MR. HEIM: Granted --

25 THE COURT: Well, that's a

1 counterdesignation.

2 MR. HEIM: I see. So it's in.

3 THE COURT: Yes.

4 MR. HEIM: Okay.

5 THE COURT: That's a counterdesignation.

6 Page 10, counterdesignation is granted.

7 MS. LUTHER: Judge, on --

8 THE COURT: Page 12 --

9 MS. LUTHER: -- Page 11, co-defendants have a
10 counterdesignation, Lines 2 through 25, which discusses
11 LeBow's proxy fight for RJR, and we object to that on
12 the basis of relevance.

13 THE COURT: Whose counterdesignation is it?

14 MS. LUTHER: Theirs.

15 MR. HEIM: It's the defendants'
16 counterdesignation. It was discussed in LeBow's
17 testimony.

18 MS. LUTHER: So it would be cumulative, as
19 well.

20 MR. HEIM: Well, it talks about the proxy
21 fight.

22 THE COURT: Well, generally speaking,
23 counterdesignations relate to the plaintiffs' requests
24 for information from a depo, and generally relate and
25 have some sort of a material reference to what's being

1 used by the plaintiff.

2 If it isn't being used by the plaintiff, then
3 it would come in on your case, rather than on the
4 plaintiffs' case, if you want to use it, because that
5 material doesn't reference anything at all suggested by
6 the plaintiff. If you want to put it in on your side
7 of the case, you can, but this isn't the place for it.

8 MR. HEIM: Now, I don't know whether there
9 are other references that the plaintiffs have made to
10 this here.

11 THE COURT: Well, if we get to one, that's
12 another story. But I don't see one.

13 MS. LUTHER: So Page 11, Line 1 is in as it
14 relates to something on Page 10, Lines 2 through 25.

15 THE COURT: So I don't have a designation
16 here in this copy as far as defense designations.

17 MS. LUTHER: It goes Page 11, 2 through 25,
18 Page 12, 1 through 9 and 4 through 18, so those are all
19 defendants' counterdesignations, which you ruled are
20 out.

21 THE COURT: I'll defer on them until --

22 MR. HEIM: Okay. We'll defer on these until
23 we get through the rest of it.

24 THE COURT: Yes.

25 19 through 21 on Page 12, no opposition.

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1 13, Lines 13 through 12 is unopposed.

2 Skip Page 19.

3 This is where I've got a question, because
4 you're talking about some document, A-4, and I didn't
5 know what it was you were talking about.

6 MS. LUTHER: That's one of the original
7 settlement agreements, Judge, in which Mr. LeBow agreed
8 to take a position that smoking causes disease and is
9 addictive.

10 THE COURT: All of that should be out, if
11 it's settlement.

12 MR. HEIM: Well --

13 MS. LUTHER: I think we all objected to it.

14 MR. HEIM: We did object to this. I think we
15 objected to it at a time prior to Mr. LeBow's
16 testimony. And he testified about this at trial.

17 My real problem with this was that if you
18 look at the yellow underlining, it deletes the part of
19 it that says, upon execution of this settlement
20 agreement.

21 THE COURT: Yes.

22 MR. HEIM: And, of course, the settlement
23 agreement -- the settlement was discussed, part of
24 the -- Liggett's settlement agreement. This is
25 Liggett's settlement agreement, right.

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1 So if Your Honor is inclined to let this in,

2 I would want Line 8 read.

3 MR. ROSENBLATT: Yes. I mean, I agree with
4 Mr. Heim, that the settlement agreement was discussed
5 extensively in Mr. LeBow's deposition.

6 THE COURT: So the only person having any
7 objection to this is them, on the issue of that line
8 being out?

9 Put the line back in. I really don't care if
10 you all agree.

11 MR. ROSENBLATT: No. I don't care.

12 MR. HEIM: Well --

13 THE COURT: Now the question is, what about
14 the rest of it?

15 MR. HEIM: Right. And the problem with --
16 the problem with it is, I think, two-fold, as I look at
17 it. One is from -- on Page 20, from Line 7 to 17, it
18 deals with warnings. And I don't --

19 THE COURT: I just -- you know, I'm reading
20 this thing and I'm trying to figure out, is this
21 supposed to be a quote starting with, I am and have
22 been?

23 MS. LUTHER: Yes, it is.

24 THE COURT: Is that LeBow quoting?

25 MS. LUTHER: It's the document being quoted.

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1 MR. HEIM: It's a document being quoted.

2 MS. LUTHER: But it's a public statement

3 LeBow subsequently made in compliance with his
4 obligation.

5 THE COURT: So there is an objection to that
6 statement.

7 MR. HEIM: Yes, because it's just simply
8 reading the document.

9 THE COURT: Okay. Then there's a question
10 after that, which is: Now, do you stand behind that
11 statement? And the answer is: Yes.

12 So where do we go with that? I mean, you
13 can't just say, LeBow made a statement, do you agree
14 with it, and not let the jury know what you're talking
15 about, which statement.

16 So, if he's already testified about this,
17 then I don't see any reason why it can't come in at
18 this point, if it says: Is this something you stand by
19 and agree with? He says: Yes.

20 MR. HEIM: Your Honor, what I would ask that
21 we do is read Line 8 and put a quote so that the jury
22 understands the document being quoted. Because
23 otherwise --

24 MR. ROSENBLATT: This is video.

25 MR. HEIM: Oh, is this video?

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1 MR. ROSENBLATT: Yes. It's video.

2 MR. HEIM: It's video.

3 MR. ROSENBLATT: It's clear from the video.

4 THE COURT: All right.

5 MR. HEIM: And I would stop it at Line 6 on
6 Page 20. I'm sorry.

7 THE COURT: On Page 20. I did. I drew a
8 line on 6.

9 Now we have another question, and then that's
10 the number two point, in the settlement, I guess, the
11 document, on page A-5 of the first column, number 2:

12 Liggett will add a prominent warning to each
13 of our packages of cigarettes and all of our cigarette
14 advertising stating that smoking is addictive. Has
15 that begun yet?

16 He says: We're in the process of doing it.

17 MR. ROSENBLATT: That's exactly what LeBow
18 said.

19 MR. HEIM: Yes. And we had objected at the
20 time, I believe, that this was -- this was calling into
21 question the warnings that the Congress had approved,
22 and objected to it on preemption grounds.

23 THE COURT: Yes. That's what really bothers
24 me.

25 MR. ROSENBLATT: It's not calling into

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1 question anything, Judge. It's just saying -- it's
2 making a distinction between Liggett and the other
3 companies, as there's a distinction, the jury knows
4 about settlement agreements. He settled. He smelled a

5 rat.

6 You know, to give them -- this is absolutely
7 back-up of the CEO of Liggett to the number-one guy at
8 Brooke.

9 MR. HEIM: Well, it certainly calls -- it is
10 suggestive, and by implication, that the other warnings
11 aren't sufficient. So to say it's not suggestive of
12 anything is just wrong.

13 MR. ROSENBLATT: Well, you know, Cipollone
14 didn't deal with something being suggestive. We're
15 getting so far, far afield --

16 THE COURT: Well, how do you analyze
17 Cipollone in this regard?

18 MR. ROSENBLATT: I don't think Cipollone, you
19 know, applies to this.

20 THE COURT: Why?

21 MR. ROSENBLATT: Cipollone applies to a
22 situation where you're directly, explicitly in some way
23 saying the warning is not good enough. We've never
24 done that. That's not the issue here.

25 MR. MOSS: Cipollone is --

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1 MR. ROSENBLATT: They simply see this,
2 implicit, or this gets to the edge or it's close, but
3 we're not -- we're just not talking about a preemption
4 problem here.

5 MR. MOSS: Judge --

6 MR. ROSENBLATT: They, as a result of
7 their -- their agreement with Attorney Generals, are
8 agreeing to say that their product is addictive. And
9 I'm not getting up and saying, why didn't you, you
10 know, do that? That's not in here.

11 It would be one thing if I were to say, well,
12 Philip Morris isn't doing that. I don't say that. I'm
13 just saying what Liggett does. And that's what they do
14 that --

15 MR. HEIM: If you can't say it, you can't
16 imply it.

17 MR. MOSS: Exactly. Judge, there is no way
18 anyone can credibly argue this does not directly impact
19 preemption. It clearly does, Your Honor.

20 And, you know, I hear all of these
21 generalizations, but this clearly is impugning the
22 congressionally mandated warning. And he's saying,
23 well, I'm not putting it in for that purpose.

24 Well, he may or may not be, but the bottom
25 line is, and what Your Honor has to consider, is the

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1 impact this is likely to have on a jury and, clearly,
2 that's the problem.

3 THE COURT: Well, if we relate to that, then
4 we've got to go back to the LeBow testimony, in which
5 he made these statements in front of the jury.

6 So that's already been out.

7 MR. MOSS: I understand that, Your Honor,
8 and, once again, there were objections.

9 THE COURT: Yes. I know there were
10 objections. The question is if it was error, was it
11 fundamental error, dispositive error, harmless error?

12 MR. MOSS: I understand. We had this
13 discussion yesterday about another area.

14 THE COURT: I know.

15 MR. MOSS: But all we can do --

16 THE COURT: It's a very touchy area, because
17 what Cipollone - if you read Cipollone, it says these
18 are the warnings and no others will suffice. They
19 never touched on the issue of addiction, because at
20 that time nobody talked about addiction until much
21 later.

22 So the question in Cipollone was that if
23 you're going to criticize the warnings and claim that
24 they are insufficient to inform the general public,
25 that is preempted and you can't do that.

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1 Now, that would be an active criticism of
2 what the warnings do or do not do. So, in this regard,
3 what happens now is they say, all right, these warnings
4 are out there, but I'm going to put an additional
5 warning here.

6 MR. HEIM: Judge, the one point that all of
7 the cases are unanimous on -- I can't think of a case

8 that goes in the other direction at all -- is that
9 addiction is included within the conundrum of the
10 Cipollone decision with regard to the warnings are
11 sufficient on any matter affecting smoking and health.

12 THE COURT: This is what the problem is.

13 MR. MOSS: Yes. We gave you a number -- we
14 gave you all of the cases.

15 MR. ROSENBLATT: There's something -- this
16 is -- this is a fact -- this is a factual matter.

17 You want a pack of Chesterfields? You want a
18 pack of Eve? This is what it says. How can you hide
19 this -- Mr. Moss talks about generalization. The
20 generalization here is the congressionally mandated
21 warnings, as they encompass --

22 THE COURT: Here is the point. If one starts
23 to think about it and analyze it, if Cipollone
24 prohibited any additional warning from being placed on
25 cigarette packages, it would have -- that, of

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1 necessity, would have prohibited LeBow putting on his
2 cigarettes the addiction warning.

3 The Federal Government took no action on
4 that.

5 MR. HEIM: No, Judge. I don't think that's
6 what -- I don't think that the Cipollone decision or
7 the statute -- that is, the backbone of the Cipollone
8 decision -- would have precluded LeBow from putting a

9 warning on the package.

10 I think the import of the decision, as it has
11 been read by virtually every court, has been that
12 the -- without the -- a warning that LeBow put on the
13 pack, that legally the warnings that are already on the
14 pack are deemed conclusively to be sufficient and to
15 warn fully on smoking and health, including addiction.

16 I think that's an accurate statement of it.

17 THE COURT: Well, if they're not precluded,
18 then they can put it on there; right?

19 MR. MOSS: No question. They could put it on
20 there.

21 THE COURT: The question is if you put it on
22 there and it's not precluded, then what part of the
23 preemption are you violating?

24 MR. MOSS: You're not violating preemption,
25 but preemption says that if a manufacturer places these

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1 mandated warnings on its packages, then it cannot be
2 held responsible for a failure-to-warn claim after the
3 date.

4 THE COURT: Yes.

5 MR. MOSS: All right. Now, having said that,
6 there cannot, conversely -- what is the relevance to
7 the liability of these defendants of the fact that
8 Liggett put an additional warning --

9 THE COURT: Only to this degree. If they use

10 it for the purpose of saying, well, Liggett did it, you
11 should have done it, therefore you're guilty of not
12 doing it, I would agree.

13 MR. MOSS: Then what is the purpose?

14 THE COURT: Then the next purpose is
15 answering the question, which the jury is going to have
16 to answer, is cigarette smoking addictive?

17 And if that answers that question, that a
18 person thinks it's addictive to the degree that they
19 put a label on something saying that it is, then it's
20 up to the jury to say whether it is or it isn't. And
21 they can use it for that purpose, but not to establish
22 liability on the other members.

23 MR. MOSS: When that gets answered -- you
24 see, we don't have to run into this problem, and we are
25 getting into a significant preemption.

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1 THE COURT: In terms of the science.

2 MR. MOSS: Because they have asked, and
3 Mr. LeBow on the stand here said, in his opinion, not
4 as a scientist, but in his opinion, it is addictive.

5 See, you've already got that in. There is no
6 need -- if that's the purpose, and I think that can be
7 the only legitimate purpose in this case, that's
8 already in here.

9 MR. HEIM: Although I want to add that on the
10 day when we finally get around to talking about what

11 the questions are for this jury -- that's something
12 that we all know is going to happen at some point -- in
13 view of the testimony as to whether or not nicotine is
14 addictive, there will be a real issue as to what you
15 ask the jury about, because, I mean, there has been
16 lots of -- lots of testimony on some people are, many
17 people are, most people are, no people are.

18 MR. ROSENBLATT: Does cigarette smoking cause
19 disease? Is nicotine addictive?

20 These are key questions in the case.

21 THE COURT: Yes. I understand that.

22 MR. ROSENBLATT: One of the defendants has on
23 its packages of cigarettes it's addictive.

24 THE COURT: I think what we're going to have
25 to do is try to figure out how in the world it's going

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1 to be used as against any of the liability issues
2 vis-a-vis any of the defendants.

3 Okay. If it's used to prove addiction, or
4 his view on addiction or what he did about his view on
5 addiction, that's one thing. If it's going to be used
6 to show that somebody else is to be held liable for not
7 following the --

8 MR. ROSENBLATT: No, that's not our approach.

9 THE COURT: That's a different story. That's
10 where we're going to have to cut the line on
11 preemption.

12 All right. So, this testimony is already in.
13 And whether it's begun yet or in the process of doing
14 that is a question, and it will start in the next two
15 months or so.
16 The guy was back in -- where was that? '97.
17 So we'll overrule the objection on Page 20,
18 Line 7 through 25. And on the top, 21.
19 MR. MOSS: That comes in?
20 MR. HEIM: 7 through 17.
21 THE COURT: Yes, for the limited purposes of
22 the proof on the addiction issue only.
23 MR. MOSS: How does the jury know that?
24 THE COURT: Because we're going to tell them.
25 That's how.

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1 Okay. Page 22 --
2 MS. LUTHER: So 25, Line 25 on Page 20 and
3 Lines 1 through 4 on 21 are in, as well?
4 THE COURT: Yes.
5 MR. HEIM: That's fine. If the others are
6 in, I'd probably want that in.
7 THE COURT: Yes. That's all right.
8 Now, 22, we're back to the same thing.
9 Okay. Overrule the objection on 22, Lines 2
10 through 11.
11 I think we jump to Page 40; don't we?
12 MS. LUTHER: 31, Judge.

13 THE COURT: 31. Okay.
14 Let's see.
15 MS. LUTHER: We objected to this. Actually,
16 the defendants are in unison on this one. It's
17 hearsay.
18 THE COURT: What is -- we're talking about
19 Exhibit 4. What is Exhibit 4?
20 MS. LUTHER: Apparently it's the transcript
21 of a British television program, The World In Action.
22 THE COURT: Oh, yes. Here it is.
23 MR. HEIM: Which is not in evidence.
24 THE COURT: Yes. I know. I didn't know why
25 he was even using it. I understand the objection, of

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1 course.
2 So that would be out, Lines 6 through 14,
3 sustained. And 18 through 24, sustained.
4 32. Page 32, 1 through 7, sustained.
5 MS. LUTHER: And then 33 continues to discuss
6 that program.
7 THE COURT: 33. Now, we're talking about
8 Dr. Mold. Is he part of the program, too?
9 MS. LUTHER: I believe that that --
10 MR. ROSENBLATT: We're going to be using
11 excerpts -- my understanding is he's ill.
12 THE COURT: Who is?
13 MR. ROSENBLATT: Dr. Mold is still alive, but

14 he's in bad health.

15 MR. MOSS: There is an issue that I think we
16 need to talk about at this point.

17 THE COURT: What is that?

18 MR. MOSS: From hearing what Mr. Rosenblatt
19 said, he intends, I guess, to utilize some testimony by
20 Dr. Mold. I assumed that he did not, based upon what
21 he told us he did yesterday, because Mold wasn't
22 included in the list. But if he is intending to use
23 Mold --

24 Is that my understanding?

25 MR. ROSENBLATT: My understanding, Susan is

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1 going through depositions. My understanding is she --
2 there's certain things in Mold's deposition that we're
3 going to designate.

4 MR. MOSS: If he is intending to use Mold,
5 then we have a significant and serious objection to any
6 of Mold's testimony.

7 I don't want to argue it now. I suggest that
8 if Mold's testimony does not get read, then none of
9 this should come in.

10 I guess Your Honor should just put that off
11 until you have an opportunity to hear Mold, because
12 this would make no sense. It's not in the case if Mold
13 doesn't testify, and it won't be in the case.

14 MS. LUTHER: Just for background, Judge, the

15 deposition of Dr. Mold that they're talking about is a
16 deposition that was taken in the Cipollone case about
17 11 or 12 years ago.

18 THE COURT: Okay. He developed what, the
19 palladium cigarette.

20 MS. LUTHER: He was one of the researchers
21 working on it, yes.

22 MR. ROSENBLATT: I'm informed that
23 designations for Mold's videotape deposition in
24 Cipollone were hand-delivered to defense counsel
25 December 9th, with a position letter, color-coded

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1 deposition.

2 MR. MOSS: I'm not suggesting we don't have
3 that, and I can give you a long history on that now,
4 but I don't think that would be productive.

5 I think they're -- and we can cover you this
6 tomorrow, Your Honor.

7 THE COURT: Let me ask you a question.

8 MR. MOSS: Yes, sir.

9 THE COURT: He apparently was working on this
10 palladium cigarette. Is that the way it's pronounced?

11 MR. ROSENBLATT: Safer cigarette.

12 THE COURT: Safer cigarette, yes.

13 And this person is familiar with it. Other
14 people have heard about it and talked about it before.
15 So what's the problem with making a reference to

16 Dr. Mold and the palladium cigarette?

17 MR. ROSENBLATT: There is no problem.

18 MR. HEIM: Well, there's lots of problems.

19 Well, first of all, if you read this, and he
20 testifies further on, it's hearsay. This all was
21 before he ever came to the company.

22 If you look down at Line 20, he says: I read
23 that somewhere.

24 THE COURT: Yes, I know.

25 MR. HEIM: So he doesn't really know about

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1 it.

2 THE COURT: But what happened was it bombed.

3 MR. HEIM: Right.

4 THE COURT: It didn't do well on the market?

5 MS. LUTHER: It never made it to the market,
6 Judge.

7 THE COURT: It says here it did very badly in
8 terms of my type of consumer testing.

9 MR. MOSS: It was never marketed.

10 THE COURT: That was the problem. It never
11 got on the market.

12 So the answer here is -- I mean, the problem
13 here is: Did the tobacco industry do anything at all
14 to develop a safer cigarette? That's one of the
15 questions.

16 This shows that somebody was working on a

17 safer cigarette, whether it was a good one, a bad one,
18 but they were working on a safer cigarette.

19 So what is the real objection?

20 MR. MOSS: The objection is this man has no
21 knowledge of it, and unless -- and it's not in the case
22 now. We're just introducing an issue that really is
23 not in the case now.

24 Now, if Dr. Mold is allowed to testify,
25 that's a different issue.

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1 MR. HEIM: We basically -- Judge, what this
2 is all about, so you know what's going on now, Mold has
3 a different view of what happened to his, quote, "his
4 invention," the palladium process. So Mold tells the
5 story in the Cipollone deposition of 11 or 12 years
6 ago, and that's a different view than essentially what
7 this fellow says.

8 But our view is that that story, for lots of
9 reasons, shouldn't be told to this jury and isn't
10 admissible and that that deposition can't be used.

11 Among other things, not everybody here was
12 even a party to that case. So, you know, Mr. Moss is
13 right, that we ought to take up that issue of whether
14 Mold can testify at all before you see whether this
15 is --

16 THE COURT: I thought it was a relatively
17 simple issue.

18 MR. HEIM: No, it's not.
19 THE COURT: Somebody tried to make a safer
20 cigarette.
21 MR. ROSENBLATT: It is. In this deposition,
22 there's no discussion of Mold's different points of
23 views that he sets forth, and your resolution of that
24 issue has nothing to do with this issue.
25 THE COURT: Well, the answer is: I know it

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1 was a long time ago. That was some research work that
2 came out with a design of cigarette, which by adding
3 palladium, I think, in some way to the blend, reduced
4 the incidence of tumors or something on the back when
5 mice were painted with it.
6 MR. MOSS: That's really the hearsay of it.
7 MR. HEIM: "I read that somewhere."
8 MR. MOSS: That's the hearsay.
9 MR. ROSENBLATT: Well, any CEO --
10 MR. MOSS: Let me just finish.
11 Fulford was with this company a month or a
12 matter of a couple of months when this deposition was
13 taken. Just coming here --
14 THE COURT: All right. I'll tell you what
15 we'll do. Let's defer on this page.
16 MR. MOSS: That's all I was asking.
17 THE COURT: Page 32, we'll defer.
18 MR. ROSENBLATT: So you got what you want.

19 THE COURT: We'll defer until we figure out
20 what we're talking about, what effect, if any, it may
21 have on this case.

22 Page 36, again, a reference to Mold. I have
23 a question mark on it.

24 MS. LUTHER: The codefendants have a
25 counterdesignation starting at Page 34, Line 25, Judge.

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1 THE COURT: Where is that? Page 34, Line 25.
2 Are you a smoker?

3 MS. LUTHER: Page 35, Line 6. It says: I
4 stopped when I was 27. That's where it ends.
5 We just object to it based on the relevance.
6 I don't feel particularly strongly about it.

7 THE COURT: If they were smokers or the
8 family or the rest of it, no. Overrule that.

9 MS. BERGER: What is in, because I don't have
10 mine marked.

11 THE COURT: Mine is not marked either. Page
12 34, Line 25.

13 MS. LUTHER: 35, Line 6, ending at: I
14 stopped when I was 27.

15 THE COURT: 35 through Line 9.

16 MS. LUTHER: Through 6 -- no. The
17 designation doesn't go through Line 9. And then it
18 picks up again on Line 10, through 21, stopping with
19 the word no.

20 MS. BERGER: Thank you.

21 THE COURT: And the objection -- the
22 designation is --

23 MS. LUTHER: The designation on Page 35 is
24 Line 1 through 6. On 6 it says: I stopped when I was
25 27. That's it. Then it picks up again on Line 10.

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1 THE COURT: Through --

2 MS. LUTHER: Down to Line 21. Answer: No.
3 That's the end of the designation.

4 MR. HEIM: The objection is relevance, right,
5 Counsel?

6 MS. LUTHER: Right. Which he overruled.
7 Although --

8 THE COURT: It's getting so esoteric, really.
9 Somewhere along the line I read something
10 about one of these people answering the question about
11 smoking, about my mama told me it was going to stunt my
12 growth. It's in here somewhere.

13 MS. LUTHER: Now we go to 36.

14 THE COURT: All right. So he was a smoker.
15 Are you going to read that stuff?

16 MR. ROSENBLATT: Pardon?

17 THE COURT: I don't know who wants to read
18 it.

19 MR. HEIM: We want to read it.

20 THE COURT: You want to read it? So read it.

21 What do I care?
22 All right. Line 21.
23 Page 36. Reference to Dr. Mold again.
24 MS. LUTHER: Right. So defer.
25 THE COURT: So that 36, 20 through 25, and

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1 37, 1 through 10 is deferred.
2 MS. LUTHER: 38, 8 through 10 relates to the
3 question on 37.
4 THE COURT: I don't even know what the
5 question was.
6 MS. LUTHER: It had to do with Dr. Mold.
7 THE COURT: It's a Mold issue. All right.
8 So defer.
9 Okay. 39, Line 9 through 13, overruled.
10 40 -- 40 and 41, I've got question marks.
11 Why? This is the packing -- the warning label.
12 MR. HEIM: Well, Judge, it seems to me, you
13 know, and I have to go back and see what you let in on
14 the -- on Page 20, and I think -- I think you let in,
15 over our preemption objection, down to Line 17 on Page
16 20.
17 And this thing picks up and says --
18 THE COURT: Well, now you're getting into the
19 definition of addiction.
20 MR. ROSENBLATT: We've done that with all
21 kinds of witnesses.

22 MR. HEIM: Yes. But actually, if you're
23 going to let in the other one, we would want this in,
24 too, probably.
25 MR. ROSENBLATT: Okay.

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1 MR. HEIM: I mean, our sense is we don't want
2 any of it in, but if the first part is coming in, we
3 might as well explain what they think they mean by it.
4 THE COURT: Okay.
5 MR. MOSS: The first part is coming in over
6 our objection, so we're left with no alternative.
7 THE COURT: It's your objection.
8 MR. HEIM: It's our objection.
9 THE COURT: RJR and Phillip and the rest of
10 you agree that if I'm allowing the other in, you're
11 going to withdraw your objection?
12 MR. HEIM: Correct.
13 MR. MOSS: Not withdrawing our objection --
14 yes, as to this, not to the first part.
15 MR. HEIM: Right. The Judge knows.
16 MR. MOSS: Right. But I want the record to
17 be clear.
18 MR. ROSENBLATT: Just make sure that record
19 is clear.
20 THE COURT: That means there isn't any line
21 down the middle I can walk. Damned if I do and damned
22 if I don't.

23 Okay. All right. So if we go back over it,
24 pursuant to the ruling on Page 20 -- Page 40, Lines 19
25 through 25 will be admitted. And 41, Lines 1 through

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1 25, will be admitted.

2 MR. HEIM: Correct, Your Honor.

3 MS. LUTHER: And 42, Line 1.

4 THE COURT: And the answer on Page 42, Line
5 1. Okay.

6 MS. LUTHER: Then on 45.

7 THE COURT: We're back to James Mold again.

8 MR. ROSENBLATT: So much is being deleted
9 from this deposition on an issue which really --
10 whatever you do with respect to Mold's deposition
11 should have no impact on what this CEO of Liggett is
12 saying. We've gone along --

13 THE COURT: Let me just ask you a question.

14 You look at this question, you break down the
15 question to, was there any research done along the
16 lines of developing a safer cigarette?

17 It says: Not while I was there.

18 MS. LUTHER: See, Judge, I mean that's part
19 of the reason that Liggett and Brooke objected to it.
20 The preface about Dr. Mold has nothing to do with the
21 question. So that's kind of extraneous.

22 And then they're asking him what he was doing
23 when he worked for Imperial Tobacco Company, a British

24 company that has no relevance to this case whatsoever,
25 which is why --

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1 THE COURT: Then he says --

2 MR. ROSENBLATT: Other than his background in
3 the tobacco industry.

4 THE COURT: We tried it one time and left out
5 tobacco. We heard about that.

6 I think if you break the question down to,
7 was there any research done to develop a safer
8 cigarette, which starts on Line 18.

9 MS. LUTHER: Starting with "while you were
10 with Imperial."

11 THE COURT: Yes. You can do "while you were
12 with Imperial" if you want to. I don't care.

13 MS. LUTHER: Because otherwise it's
14 misleading to the jury.

15 THE COURT: That's all right. I don't care.
16 It just goes to his background, his knowledge of the
17 tobacco industry and what happened he says: Not while
18 I was there.

19 The answer is: No, we didn't do that. There
20 had been many years earlier an attempt. Then he goes
21 into the attempt. I didn't have any problem with all
22 of that.

23 MS. LUTHER: I mean, just this whole line of
24 questioning goes to the state of the industry in Great

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1 in the U.S. class action. All of the way through Page
2 47, Judge.

3 THE COURT: Yes, but it relates. It's
4 material, even if it happened in Great Britain. They
5 come back and say they had attempted to make the
6 cigarettes safer on the basis of lower tar. And that
7 was considered to be associated with lower health
8 risks.

9 So it's material in that regard, as to what's
10 been happening in the United States and the issue of
11 tar and health risks.

12 MS. LUTHER: But this wasn't happening in the
13 United States.

14 THE COURT: I know it wasn't happening in the
15 United States, but in that regard, the concept is what
16 we're talking about.

17 Okay. I allowed in Page 46, 1 through 17;
18 sustained the objection, Line 18 through 25. And Page
19 47, 1 through 18.

20 MS. LUTHER: Could you repeat that, Judge?
21 Starting with Page 45.

22 THE COURT: Page 45.

23 MS. LUTHER: Starting with: While you were
24 with Imperial.

25 THE COURT: Overruled from that line through

1 25.

2 MS. LUTHER: Okay.

3 THE COURT: Page 46, Line 1 through 17,

4 overruled.

5 Sustained as to 18 through 25.

6 MR. ROSENBLATT: Wait. Judge, on that, that
7 deals with -- he's the only one that takes a contrary
8 position. You remember, every tobacco executive says
9 that low tar -- gee whiz, there are people that have
10 taste preferences, when obviously the truth of the
11 matter is that they advertise -- they've created this
12 concept deliberately in the consumer's mind that low
13 tar is less dangerous.

14 And this deals -- you've allowed this kind of
15 exchange with every witness.

16 THE COURT: I don't know about that.

17 MR. ROSENBLATT: He just gives a different
18 answer.

19 MR. HEIM: What page are you looking at?

20 MR. ROSENBLATT: I think --

21 MS. LUTHER: 46, Line 18.

22 MR. ROSENBLATT: 46, Line 18.

23 MR. HEIM: Kelly, do you want that in?

24 MS. LUTHER: I think we do.

25 MR. HEIM: I think we'll withdraw our

1 objection to that. It's a strange dynamic.

2 MR. ROSENBLATT: I convinced Heim.

3 THE COURT: If you can convince him, you're
4 much better off.

5 MR. ROSENBLATT: Right.

6 MR. HEIM: So we would withdraw our objection
7 to 18 to --

8 THE COURT: 25.

9 MR. HEIM: -- 25 on 46 and --

10 THE COURT: 47, to 18.

11 MR. HEIM: -- 47 down to 18.

12 MS. LUTHER: You have a cross-designation
13 from 19 to 21.

14 MR. HEIM: Well, I don't care about that.

15 THE COURT: I feel like I've been turned
16 upside down.

17 MR. HEIM: As I said, it's a strange dynamic
18 on this deposition.

19 THE COURT: Yes. Page 50.

20 MS. LUTHER: Cross-designations.

21 THE COURT: I'm sorry.

22 MS. LUTHER: These are cross-designations.

23 THE COURT: Yes, by who?

24 MS. LUTHER: Actually, both of ours.

25 THE COURT: Okay. I granted both of them.

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1 MS. LUTHER: 1 through 3, and then 9 through
2 19.

3 THE COURT: Page 151, 1 through 9, granted.
4 That's a cross-designation.

5 MS. LUTHER: Right.

6 THE COURT: Page 55.

7 MS. LUTHER: I have it marked up, Judge, on
8 51, the plaintiffs' counterdesignation.

9 THE COURT: How come we don't have that? I
10 don't have anything on Page 51 for plaintiff.

11 MS. LUTHER: Okay.

12 MS. BERGER: I have 2 through 9 marked on
13 mine.

14 THE COURT: You do or not?

15 MS. BERGER: I have marked on Page 51, 2
16 through 9.

17 THE COURT: Yes. 2 through 9. We already
18 went through that. She was saying, in addition to
19 that, is there any other?

20 MS. LUTHER: So we go to 55 now.

21 THE COURT: I think I'm losing control. Let
22 me try to regain control, okay.

23 So I'll name the pages, I'll name the lines,
24 and then if there's something that I missed, you holler
25 out.

1 MS. LUTHER: Sounds good.

2 THE COURT: Page 55, Line 10 through 18,
3 overruled.

4 MS. LUTHER: Co-defendants have a
5 counterdesignation on 54.

6 THE COURT: 54?

7 MS. LUTHER: Uh-huh.

8 MR. HEIM: Yes. 16 through 25. It's kind of
9 part of what you just overruled

10 THE COURT: So you want that
11 counterdesignation. See, I don't have any of this
12 listed on here.

13 MR. HEIM: Yes. I don't know why, Judge.
14 Mine is fully color-coded, and I gather yours must not
15 be.

16 THE COURT: It is not.

17 MR. HEIM: I wonder if I should give you mine
18 to make it easier.

19 THE COURT: No, because I've already marked
20 this.

21 All right. Sing out if I miss something.

22 MR. HEIM: I will.

23 THE COURT: Line 16 through --

24 MR. HEIM: 25.

25 THE COURT: -- 25 on page --

1 MS. LUTHER: 54.

2 THE COURT: Then on the top of Page 55.

3 MS. LUTHER: Right.

4 MR. HEIM: 55, through 9.

5 THE COURT: Okay. I don't hear any objection

6 from the plaintiffs, so apparently that's all right.

7 All right. Can we go to 56 or beyond?

8 MS. LUTHER: Yes.

9 THE COURT: I wish.

10 MS. LUTHER: I think we jump to 72 here,

11 Judge.

12 THE COURT: My next page I have marked is 72.

13 MS. LUTHER: And on 72, Plaintiffs' Exhibit

14 from D.M. Conning -- Conning is not a Liggett employee.

15 Actually, I don't know who Conning is, but my

16 understanding is he's somebody from Great Britain, so

17 we object to questions on this memo as hearsay.

18 THE COURT: Who is Conning anyway?

19 MS. LUTHER: He is just somebody who wrote a

20 memo.

21 THE COURT: So he didn't work for any of

22 the --

23 MS. LUTHER: He's not a Liggett employee.

24 THE COURT: -- defendants' employees. He's a

25 British Tobacco employee?

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1 MS. LUTHER: I don't even know if he's even a
2 tobacco employee, Your Honor.

3 THE COURT: Okay. All right. Sustain the
4 objection on that.

5 I'm down to Line 17. On Line 18, we pick up
6 Exhibit 22.

7 MS. LUTHER: Now, Calleson is a Liggett
8 employee. But they ask him if he's ever seen the memo.
9 He says: No. So we object to it.

10 THE COURT: That's the end of that. There's
11 no reference to it. Okay.

12 So, sustain the objection on that one.

13 Then we get to 74. We're talking about
14 Exhibit 23, the Washington Post.

15 MS. LUTHER: Which we object to as hearsay.

16 THE COURT: Okay. Here it is where the
17 reference is Mold told Edell that Liggett suppressed
18 the palladium cigarette.

19 MR. HEIM: Yes. Edell is a lawyer.
20 Actually, Edell is the lawyer that brought the
21 Cipollone case.

22 THE COURT: Okay. This is the critical
23 question.

24 What, if anything, do you know about it?
25 He says: I covered it earlier.

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1 MR. MOSS: Earlier meaning --

2 THE COURT: He says that's where it showed it
3 wasn't acceptable by a consumer taste point of view.

4 Now, he throws in this issue of a new set of
5 variables as far as the chemistry is concerned. I
6 don't know anything about that.

7 MS. LUTHER: On 75.

8 THE COURT: All of that is going to be
9 deferred until we figure out Mold.

10 All right. Where do we jump to? Page?

11 MS. LUTHER: 84. It is another co-defendant
12 designation regarding --

13 THE COURT: What line?

14 MS. LUTHER: 16 through 19. Discussing his
15 smoking history again.

16 THE COURT: Why do you always cut it off in
17 the middle of his answer? Why don't you go down to his
18 answer?

19 MR. HEIM: I don't know.

20 THE COURT: It ends on 22.

21 MR. HEIM: You know what? This is so much
22 dropped in the middle of everything, I think we're just
23 going to skip it. It jumps back and forth.

24 THE COURT: Skip.

25 MR. HEIM: Right.

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1 THE COURT: Okay.

2 MS. LUTHER: 89.

3 THE COURT: Whose objections are these,
4 anyway?
5 MR. HEIM: These are mine, but --
6 THE COURT: Then you holler out.
7 MR. HEIM: I just did.
8 MS. LUTHER: Well, I've objected, as well,
9 Judge, to some of the stuff.
10 MR. HEIM: And ladies first.
11 THE COURT: Okay. Now, all right.
12 MS. LUTHER: He's my CEO.
13 THE COURT: There's an orange mark there.
14 MS. LUTHER: 89 is the plaintiffs'
15 designation from 8 to 12. And it's more addiction.
16 MR. HEIM: It's cumulative, repetitious. He
17 already said the same thing earlier in the deposition.
18 MR. ROSENBLATT: It crystallizes it.
19 THE COURT: All right. Sustain it as
20 repetitious.
21 Okay. Now, my next page is 98.
22 MS. LUTHER: Right.
23 THE COURT: If there is anything in between
24 the pages that I tell you about that you object to or
25 that you object that I don't have, you let me know.

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1 MS. LUTHER: On this one, we objected because
2 of the world-wide medical and scientific community.
3 THE COURT: Overrule the objection, 18

4 through 23 on 98.

5 MS. LUTHER: And it's cumulative.

6 THE COURT: 101 I have next.

7 MR. HEIM: And we've objected here.

8 THE COURT: Yes. I've crossed that out.

9 Sustain the objection.

10 Page 102.

11 MR. ROSENBLATT: Oh, I would have thought you
12 would want this.

13 THE COURT: So, for the record, 101, Lines 20
14 through 25 is sustained. 102, Lines 1 through 9,
15 sustained.

16 MR. ROSENBLATT: Now, Judge, this goes
17 back -- this is a very important issue to us, because
18 this goes back to our contention that the true position
19 of the tobacco company is, we wouldn't care -- we
20 wouldn't care -- this shows you the business mentality,
21 the bottom-line mentality -- we wouldn't care if our
22 product kills. It's a legal product. We're going to
23 sell it. If they're stupid enough to buy it and they
24 get sick and die, that's the American enterprise
25 system. And the jury should hear this.

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1 THE COURT: I haven't heard one person say
2 that. They say that as long as it's legal, we don't
3 have any opposition or objection to it. That's as far
4 as they go. All of the rest is hyperbole that you --

5 MR. ROSENBLATT: No. No. In the context,
6 some of the CEOs, where I've asked very, very
7 specifically, if you became convinced that the warning
8 is true, that it does cause these diseases, will you
9 continue -- Nick Brooks most recently, he said:
10 Absolutely we'd sell it, keep selling it.

11 THE COURT: I know. That's an argument you
12 can make to the jury in the case. But all hyperbole is
13 not, as far as evidence is concerned and testimony --

14 MR. ROSENBLATT: The evidence is, they say --
15 so I say in a very low voice, without, you know,
16 without hyperbole --

17 MR. HEIM: The moral and ethical stuff is
18 irrelevant. It's not relevant. It is hyperbole.

19 MR. ROSENBLATT: It's hyperbole because it
20 gets to a bottom line, and it's the truth. It's legal;
21 we'll sell it. If it kills half of America, so be it.

22 THE COURT: That's an interpretation made on
23 that statement --

24 MR. ROSENBLATT: No.

25 THE COURT: -- which only you make.

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1 MR. ROSENBLATT: CEOs have actually said
2 that.

3 THE COURT: I don't think anybody has said if
4 it kills a whole bunch of people, so be it.

5 MR. ROSENBLATT: No.

6 THE COURT: That's the problem. They say,
7 basically, if it's legal, we'll continue to do what is
8 legal.

9 MR. ROSENBLATT: Even if we become convinced
10 it's killing people.

11 MR. KIRBY: That is not what Reynolds' CEO
12 testified to.

13 THE COURT: That's what you interpret them as
14 saying.

15 MR. KIRBY: What Reynolds CEO testified --

16 THE COURT: 102, 1 through 9, sustained.

17 All right. Now, I have a paper-clip on 112.

18 MS. LUTHER: Right.

19 THE COURT: No objection, Lines 12 to 13.

20 MS. LUTHER: Right.

21 THE COURT: 113 is a designation,
22 counterdesignation.

23 MS. LUTHER: I don't think any of that is
24 necessary at this point, because it relates to
25 documents that you kept out, with the exception of the

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1 Mold stuff, so we may have to defer it.

2 THE COURT: It's up to you. Do you want it
3 in or out?

4 MS. LUTHER: Well, we want it in. All of the
5 defendants want it in, but the plaintiffs objected to
6 it on the basis that no questions were asked about

7 documents.

8 THE COURT: Now you're confusing me.

9 You're talking about a whole bunch of
10 documents here, and you say these documents are not in
11 evidence. But will they be in evidence?

12 MS. LUTHER: Well, it depends on what you do
13 with the Mold stuff.

14 MR. HEIM: I think the 113 and 114 comes in
15 anyway. He says: You're right, I'm just speculating
16 about these documents. He makes it clear.

17 MR. ROSENBLATT: Boy, is that ever having it
18 both ways. They get everything on Mold that we've
19 designated deferred, and now they want to put in that
20 he really doesn't know much about Mold, the Mold
21 documents.

22 THE COURT: Okay. Now, it says you were
23 asked a number of questions this morning with regard to
24 a set of about 30 documents presented to you by
25 Mr. Rosenblatt. I don't know what they're talking

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1 about because I don't remember 30 documents. I
2 remember four or five. And you talk about Mold.

3 These are Mold documents.

4 MR. ROSENBLATT: I think so. Some of them.

5 THE COURT: Okay. Many of these documents
6 precede your tenure. Right. You've been CEO. Blah,
7 blah, blah.

8 Now, these documents are from the '60s, '70s,
9 received during your tenure. Right. You're made no
10 study of historical documents at Liggett or any other
11 American Tobacco Company in the 13 months you've been
12 in the United States; is that correct? He says: Yes.

13 See, that question is fine. That answer is
14 fine. I don't have any problem with 114, Lines 6
15 through 10.

16 And the rest of it is excludable, because we
17 haven't introduced a document.

18 MR. HEIM: Yes. I agree with Kelly, that as
19 to the rest of it, we have to defer, because it depends
20 on what happens with Mold.

21 THE COURT: If these are the documents you're
22 making reference to --

23 MR. HEIM: If that were to come in, we would
24 obviously want him to admit that he was only
25 speculating and he didn't know anything about them.

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1 THE COURT: We need the documents one way or
2 another for a statement like that to come in. I mean,
3 basically speaking, are you familiar with 150 documents
4 they used in Minnesota? No, I wasn't. Okay. Thank
5 you very much.

6 Now what?

7 MR. HEIM: Well, that's all it says. That's
8 what he says. You can only speculate as to the meaning

9 of the authors of these documents. He says, yes.

10 THE COURT: Okay. So he's not familiar with
11 the author. He doesn't know what they're talking
12 about. He'd speculate as to their meaning, and the
13 jury doesn't know what documents you're talking about
14 anyway. So what value does any of that have to do with
15 anything?

16 MR. HEIM: It depends.

17 THE COURT: Only if you're using a particular
18 document.

19 MR. HEIM: Right. Right. That's why I said
20 I think we should defer on it.

21 THE COURT: Okay.

22 Question on line -- on Page 116, Line 4
23 through 8. I don't have any problem with that.

24 MS. LUTHER: That wasn't objected to.

25 THE COURT: I got a counterdesignation, so I

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1 don't have a problem with it either. I'm sure they're
2 interested in that.

3 I'm going to 121, I believe.

4 MR. HEIM: 117, there are a couple of small
5 counterdesignations, just identifying who he has been.

6 THE COURT: What line?

7 MR. HEIM: 1 through 4, 10 through 12 and 23
8 through 24. I don't think there's any objections to
9 them.

10 THE COURT: 1 through 4, 10 through 12 and
11 where?
12 MR. HEIM: 23 and 24.
13 THE COURT: Okay. Page 120, Line 24 and 25.
14 Talking about Premier. He's familiar with it.
15 MS. LUTHER: We'd object to the relevance.
16 MR. HEIM: So would we.
17 THE COURT: Why?
18 MS. LUTHER: His foundation, as to what he
19 was doing at Reynolds with Premier.
20 THE COURT: What's the objection?
21 MR. HEIM: The question is whether he was
22 infringing any patent. What in the world does that
23 have anything to do with the case?
24 MS. LUTHER: Plus --
25 MR. HEIM: That's the one issue that nobody

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1 has put into the case, whether anybody has been
2 infringing on anybody else's patent.
3 MS. LUTHER: Plus he doesn't really know the
4 answer to the question. It vaguely rings a bell.
5 THE COURT: Is this an attempt at a safer
6 cigarette or a different brand?
7 MR. HEIM: Well, Premier was, but the
8 question here is --
9 THE COURT: So if we're talking about a safer
10 cigarette trying to be produced and there was a legal

11 fight over its patent, that might become important
12 somewhere along the line.

13 MS. LUTHER: But there wasn't.

14 MR. MOSS: But this man has no information on
15 it.

16 MR. HEIM: It's not an issue in this lawsuit.

17 MR. KIRBY: And there was no such dispute.

18 MR. MOSS: We had testimony here about
19 Premier.

20 THE COURT: Yes. Okay. All right. What
21 does he say?

22 Okay. Excluded. 121, 1 through 11.

23 Now I jump to 132.

24 MS. LUTHER: No.

25 MR. HEIM: 123.

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1 THE COURT: 123. I don't have it there.

2 MS. LUTHER: It's another --

3 THE COURT: What line?

4 MS. LUTHER: 9.

5 MR. HEIM: 9 through 25 and down to 9 on the
6 next page.

7 MS. LUTHER: Which deals with his moving to
8 LeBow for the proxy fight, which you deferred on.

9 THE COURT: I haven't read this. Let me read
10 it.

11 MS. LUTHER: Okay.

12 THE COURT: The merger with the English
13 people.
14 What's the issue here? What's the relevance
15 of any of this?
16 MS. LUTHER: Well, that's why I objected to
17 it, Judge, and also as you indicated --
18 THE COURT: Wait. Wait. They want it. I'm
19 asking them, what's the significance of it.
20 MS. LUTHER: Okay.
21 MR. HEIM: Your Honor, the relevance of this
22 is, you'll recall in the cross examination of
23 Mr. LeBow, he was asked questions about whether or not
24 the reason that he ultimately decided to enter into a
25 settlement agreement with various State Attorney

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1 Generals was prompted by the fact that he lost his
2 proxy fight with Reynolds.
3 Reynolds -- he was trying to take over
4 Reynolds. That was going to be one way out of his
5 financial problems. He conceded he would have made a
6 lot of money. But he lost that battle.
7 And we're essentially showing that this guy
8 came over for that purpose, and it substantiates that
9 what the game was was to take over Reynolds.
10 THE COURT: So what?
11 MR. ROSENBLATT: LeBow admitted that.
12 MR. HEIM: Well, he said he wanted --

13 THE COURT: Your objection is?
14 MS. LUTHER: Relevance and outside the scope
15 of anything that the plaintiff designated.
16 THE COURT: Do you have any objection to it
17 coming in? You never designated it.
18 MR. ROSENBLATT: No.
19 THE COURT: One wants it; one doesn't want
20 it.
21 MR. ROSENBLATT: No. I'm against it.
22 THE COURT: So you're going with Liggett?
23 MR. ROSENBLATT: Yes.
24 THE COURT: Okay. I don't see any
25 materiality or relevance to this issue as it relates.

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1 MR. MOSS: It goes to motivation.
2 MR. HEIM: Yes. It goes to motivation.
3 THE COURT: Whose motivation?
4 MR. MOSS: LeBow's.
5 THE COURT: To do what? To put down RJR?
6 MR. HEIM: Well, Your Honor, I think the
7 proper thing probably to do here is what you said
8 earlier. I think, to be accurate, it probably isn't a
9 counter to what the plaintiffs designated, but I do
10 think we should be able to put it in, in our case.
11 THE COURT: Well, you can think about it in
12 your case. That's a different story.
13 Okay. I agree with you there. It has

14 nothing to do with what the witness answered before.
15 Any others between now and 132?
16 MS. LUTHER: Well, there's a bunch more that
17 have to do with that subject.
18 THE COURT: Well, they can play with it on
19 their case.
20 What else? 132.
21 MS. LUTHER: 129.
22 THE COURT: 129.
23 MS. LUTHER: There's another
24 counterdesignation.
25 THE COURT: 129, another one.

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1 MS. LUTHER: Yes.
2 THE COURT: What's that?
3 MS. LUTHER: Starting at Line 7.
4 THE COURT: Whose?
5 MS. LUTHER: Codefendants'.
6 THE COURT: All right. Codefendants'. Where
7 are we?
8 MS. LUTHER: Starts at Line 7.
9 THE COURT: That's the reconstruction of the
10 company, right?
11 MS. LUTHER: Right, although they omit
12 certain words from their designation. And I don't
13 object to this coming in. I just object to it being
14 parsed.

15 THE COURT: You're getting very confused.
16 You really are. I'm looking at them to find out what
17 it is you want in, line what to what. Okay.
18 MR. HEIM: Are you on Page 129?
19 THE COURT: Yes. Starting at 7.
20 MR. HEIM: Right. And you're --
21 THE COURT: And you're talking about the
22 reconstruction and all of that.
23 MR. HEIM: All right.
24 THE COURT: I don't know whether that has
25 anything to do with what's preceded this.

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1 MR. HEIM: No. It does. It does.
2 This is cross examination on his testimony.
3 THE COURT: Okay.
4 MR. HEIM: That he had an opinion as a lay
5 witness on addiction and smoking and health and whether
6 it caused smoking -- whether smoking caused disease or
7 not, which Your Honor permitted.
8 THE COURT: I don't see where that has
9 anything to do with that.
10 MR. HEIM: Sure. It says: Is it fair to say
11 you haven't looked at any smoking and health literature
12 in the past year, apart from what you saw before?
13 It's asking him what the basis is for his
14 having an opinion.
15 THE COURT: Okay. I see. I see what you're

16 saying. I thought he was talking about something else.
17 I got the impression you started out talking
18 about reconstruction or restructuring the company.
19 MR. HEIM: No.
20 THE COURT: Now you're going on to something
21 else. Okay.
22 I see how you led into it. Okay.
23 MS. BERGER: Line 7 to what line?
24 THE COURT: 7 through, what, the end of the
25 page.

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1 MR. HEIM: 25 and then --
2 THE COURT: Page 130.
3 MR. HEIM: 1 through 10 on 130.
4 THE COURT: 1 through what?
5 MR. HEIM: 10 on 130.
6 THE COURT: Okay.
7 132. Line 9.
8 MR. HEIM: Judge, our objection is it's
9 hearsay.
10 THE COURT: I agree. So that was excluded.
11 And the answer on 22 through 25 on that page.
12 I have that marked as the end of all of the
13 designations I have.
14 MR. HEIM: Right. So the counterdesignation
15 on 133 would be out, too, because we would not press
16 that.

17 And let's see if we have -- we have more,
18 Kelly.

19 MS. LUTHER: You have a slew of
20 counterdesignations starting on 175.

21 THE COURT: 175.

22 MS. LUTHER: Line 20 through 23, Judge.

23 THE COURT: The question starts there, but
24 where it gets answered, I don't know.

25 MS. LUTHER: The crossdesignation goes pretty

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1 much through Page 179.

2 THE COURT: Well, let's see.

3 MR. HEIM: He had offered an opinion early --

4 THE COURT: Yes. I realize that. I'm just
5 looking at the question between 20 and 23, which
6 appears to be an appropriate question for cross. And
7 now there's a whole bunch of colloquy. Then there is
8 an answer on 176, Line 4 through 5, which seems to be
9 okay.

10 MS. LUTHER: Then it continues with Line 10.

11 THE COURT: Then what are we talking about?
12 A report of 1994.

13 What does this say? It goes on and on.

14 MR. HEIM: Hold on to this for just a second.

15 THE COURT: It gets so convoluted.

16 (Discussion off the record.)

17 MR. HEIM: We'll withdraw all of that.

18 THE COURT: Okay.
19 MR. HEIM: All of the way through 179.
20 So that just leaves us with 183.
21 THE COURT: Page 183, line what?
22 MR. HEIM: Let me take a look.
23 MS. LUTHER: Starting with Line 11 through
24 25.
25 THE COURT: Through 25. All right. Okay.

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1 MS. LUTHER: Through the conclusion --
2 MR. HEIM: Through the conclusion.
3 MS. LUTHER: -- of the deposition.
4 MR. HEIM: And it's cross on this subject of
5 low tar.
6 THE COURT: I don't have any problem with it.
7 That's all right. Admitted.
8 183, Lines 10 through 25 and 184, Lines 1
9 through 14.
10 Okay.
11 MR. HEIM: Okay.
12 THE COURT: They're coming back at 1:30. Do
13 you all want to come back at quarter of?
14 MR. ROSENBLATT: Yes.
15 MR. KIRBY: No.
16 THE COURT: You don't have to.
17 MR. HEIM: Quarter of, Your Honor.
18 THE COURT: We'll try it. Do the best we

19 can.

20 (A lunch recess as taken at 1:10 p.m.)

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